

RESOLVING THE DEFACTO STATEHOOD DILEMMA IN IRAQ:  
EVOLVING SOVEREIGNTY NORMS AND POST-MODERN FEDERALISM

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# **Resolving the Defacto Statehood Dilemma in Iraq:**

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**Evolving Sovereignty Norms and Post-modern Federalism**

**Natalie J Hausknecht**

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### Abstract

Through a case study of Iraq, this dissertation examines one manifestation of the increasingly prevalent phenomenon in struggling *de jure* states of the establishment of alternative forms of political sovereignty embodied by *de facto* states. Tracing Iraq's failed state-building endeavor to the adoption of an ill-suited Weberian model of state-building that idealized order and centralization to the exclusion of Iraq's Kurdish minority, it argues that much of the contestation and instability witnessed by the Iraqi state since its birth into modern statehood has stemmed from an effort to create a state inimical to the very real dispersal of social and political capital endemic to its society. The result has been continual coups, instability, and civil conflict that ultimately defined Iraq's modern history.

Using this framework, the contention is defended that democracy cannot survive in Iraq without the preservation of its federal character, which alone guarantees the social, economic, political, and coercive dispersal of power necessary to maintain a free expression of Iraq's diverse interests. By restricting the responsibilities and obligations of the central state to more manageable tasks while dually creating a mechanism for a minority buy-in, federal institutions have pulled previously contentious social sources of power into legitimate state institutions and laid the foundation for a genuine, inclusive state-building process that will eventually benefit all Iraqis. While recognizing that this model is still contested by some leaders in Baghdad, the dissertation traces the path of the two key outstanding issues left unresolved --the exploitation of Iraq's vast natural resources and the territorial delineation of its disputed internal boundaries -- to argue for a resolution that will bolster Iraqi federalism without sacrificing the hope of greater unity.

## INTRODUCTION

### Evolving Sovereignty Norms in Post-War Iraq: Resolving the Defacto Statehood Dilemma

The March 2003 invasion of Iraq by American-led international forces brought to more prominent attention one of the most pressing dilemmas in twenty-first century political science: the establishment of political order in large swathes of the globe. Garnering the international community's increased attention due to evolving security concerns in the post-September 11<sup>th</sup> world, the challenge presented by the collapse or failure of states was revealed to only marginally brush the surface of a much larger problem presented by the disappointing outcome of over five decades of state-building in much of Asia and Africa.

In fact, many 'late developing' nations have been unable to establish a sense of popular national identity, remain incapable of projecting authority throughout their territory, and still struggle to enact stable political turnovers.<sup>1</sup> A significant number of states, possibly even a majority, have stagnated as "quasi-states,"<sup>2</sup> recognized for their juridical right to rule over a given territory and granted sovereignty by international norms, yet incapable of performing some of the most basic functions attributed to the modern state internally. After almost a century, many have only briefly and sporadically exercised the sort of monopoly on legitimate force and universal control over territory envisioned by early European state-theorists. While never witnessing the catastrophic collapse seen in Somalia, Cambodia or Afghanistan, they have failed to project authority over their entire territory, often facing sustained resistance among important sub-sections of their own populations.

Far removed from the unitary actors of classic Weberian state philosophy, this failure to create stable, authoritative states has been most vividly symbolized by the rise of what has variously been referred to as a 'state-within-state,'<sup>3</sup> "defacto state,"<sup>4</sup> insurgent state,<sup>5</sup> or, confusingly quasi-state. The inverse of Jacksonian quasi-states, these political entities maintain the ability to execute control over their territories and populations, but lack the juridical status of statehood granted through recognition by the international community of states. Given the

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<sup>1</sup> Kaplan, *Coming Anarchy*; Kaldor, *New and Old Wars*; Collapsing states are no longer isolated incidents. According to Fund for Peace's 2010 Failed States Index, 37 countries are at "alert" for collapse, another 90 are at "warning." Only 47, a minority, met the criteria for either a moderate or stable classification.

<sup>2</sup>Jackson, *Quasi-States*

<sup>3</sup>Kingston and Spears, *States-Within-States*

<sup>4</sup> Pegg, *International Society*

<sup>5</sup>McColl, "Insurgent State," 613-31.

underlying weakness of many juridical states and the concomitant failure to establish the legitimacy needed to bolster and define state capacity vis-a vis society, most exemplified by society's authorization of violence as “accepted within as a matter of law,”<sup>6</sup> defacto states have unsurprisingly become more common. While many states have thus shown a remarkable ability to wield brutal overt force against dissent, this has often thinly masked a profound structural dissonance where the “basic need that human beings want units such as nation-states to satisfy: to give them a feeling of ‘belonging’ and identity with the group”<sup>7</sup> remained a theoretical construct for important segments of their populations who just as often found this through membership in resistance movements or counter-nationalisms.

The Jacksonian quasi-state and the “defacto state” are thus closely intertwined. Defacto states rely on the political vacuum left by the state-building failure of Jacksonian quasi-states, in so doing, challenging the state through their claim to ultimately and legitimately act on behalf of a given political community. In their proven ability to exercise authority over a given territory and resulting threat to the recognized state’s monopoly over the use of legitimate coercive force, these defacto states often present a model closer to attaining the Weberian ideal than the state recognized by the international community to wield such power. While not the only type of organization to challenge the authority of failed or failing states,<sup>8</sup> defacto states are consequently the most serious challengers to existing states both through their superior organization and upheld assertion amongst certain segments of the population to the same authority and legitimacy traditionally associated with unitary sovereigns.

While clearly a state-level issue for the respective states, these forms of political order also have important implications for the international community, blending international and state level processes through their innate weakness. Their lack of upheld sovereignty in fact both invites the “external” in and pushes the “internal” out, transforming the hard borders of traditional sovereigns into more porous, illusionary boundaries. In fact, the sheer geographical and numerical spread, found in every major region of the international system, calls into question the claim to global authority, order, and structure long associated with the system of sovereign states, a trend

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<sup>6</sup>Bobbitt, *Shield of Achilles*, 17.

<sup>7</sup>Herz, “Legitimacy,” 318.

<sup>8</sup> For contemporary challenges to state authority: Cooper, “Economic Interdependence and Foreign”; Keohane and Nye, *Transnational Relations*; Morse, *Modernization and Transformation*; Rosecrance, *Rise of Trading State*; For critiques, Waltz, “Myth of National Independence”; Thomson and Krasner, “Global Transactions and Consolidation”; Gilpin, *US Power*.

likely to increase as more states come under threat from rising ethno-political identification.<sup>9</sup> Left out of the international political order, this growth is of paramount concern to the international community in part because the denial of defacto states' claims to statehood gives them a severely diminished stake in the survival of an order under which they are withheld any privilege. This is juxtaposed with the fact that they continue to wield the sort of actual coercive and governing power fundamental to the preservation of the system, lending legitimacy then to the very real fear expressed by many scholars from different schools of thought that the perpetuation of such a system could lead to a revival of medieval forms of anarchy and heightened warfare, breaking down the bonds of the Westphalian state order as the question of who rules a given territory becomes a theoretical construct discussed in distant power centres removed from the day-to-day lives of an important mass of the world's people.<sup>10</sup>

The potential for widespread conflict based upon the successful articulation of dual sovereignty in some emerging defacto states has in fact already become a very real threat at both the state and international-level, symbolized by the periodic outbreak of war between these entities and recognized sovereigns.<sup>11</sup> These conflicts threaten not only the weakest members of the international community but also the strongest, both through traditional forms of warfare (such as the recent South Ossetia-Georgia conflict's flare-up between the United States and Russia) and the proliferation of weapons of mass destruction, which most concur requires a universal system of recognized authority to coordinate effective counter-measures. Indeed, while those seeking the top office of the world's last remaining superpower in 2008 did not agree on the policies needed to combat the spread of anarchy and collapse of weak states, they unanimously recognized it as one of the most important challenges facing policymakers in the first decades of

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<sup>9</sup>The potential is even larger, homogenous nation-states account for under 10% of states Smith, *Nations and Nationalism*, 86.

<sup>10</sup>The importance of this challenge is one of the few issues upon which diverging schools of thought can agree. Waltz, based his argument precisely on the ability to distinguish between the rule of law that governs internal action and the lack of such authority in IR (ibid). In a state where there is no agreement on the legitimacy of such action and two authorities implement a different legal system, this image of the state is fatally undermined. Likewise, Wendt has noted that the "Lockean culture" of our current international system "pays for its relative tranquillity with a less open membership policy." Those states left unrecognized, exist in a state of Hobbesian anarchy outside of the norms and structures that bring order to the interaction of recognized sovereigns (ibid 284-292). Bull acknowledged the risk posed by non-recognized states to the international system when he argued that unrecognized state actors' ability to avoid the social rules of international society. He contended that a system could evolve in the future that is an alternative to the current sovereign state system which would resemble medieval Christendom (Bull *Anarchical Society* 190-192, 158-180).

<sup>11</sup>An example of the potential for escalation was the sudden 2008 confrontation between the United States-Russia over the Abkhazia enclave.



the 21<sup>st</sup> century.<sup>12</sup> Even peripheral states could after all, at minimum, threaten global prosperity in the highly integrated contemporary economic system. This was witnessed most visibly in the quake that rippled through the world economy as Yemen descended into chaos after the Arab Spring, forcing world oil prices up and deepening an already worrisome global economic crisis through the prospect that the vital Suez Canal would soon be framed by two failed states.<sup>13</sup>

However, while it is clear that ‘defacto states’ present very serious challenges to the current system of political order, they also offer many critical advantages to the chaos that ensues from the breakdown of legitimate authority in many ‘quasi-states’ on both the state and international stage. Given the fact that they are only found in states with existing profound structural dissonance, they are indeed more symptom than disease. Somalia represents just one instructive example, where the complete collapse of the recognized sovereign transformed the entire region into an important centre for piracy, drug smuggling, and terrorist activities, becoming a virtual no-man’s land used to spread criminality and chaos. This has a profound impact on the lives of its inhabitants, and the global structure of sovereign order. The vital exception has been the land governed by Somaliland, a ‘defacto state.’ In contrast to the rest of the juridical state, Somaliland has not only managed to secure its territory from harbouring threats to neighbouring sovereigns, but has also fulfilled vital governing responsibilities to some of the world’s most impoverished people despite the impediments imposed upon it by its unrecognized status.

This same pattern can be found in many other defacto states,<sup>14</sup> lending credence to the importance of these non-state entities in resolving the most catastrophic of human conflicts, combating the international threat of armed terrorist networks, and providing a modicum of social welfare to large numbers of the world’s inhabitants. In many places, defacto states bring order to areas that have seen perpetual warfare since the inception of the modern state system. These benefits are progressively more important in weighing their potential to contribute to ‘order’ at both the state and international level as the major threats to human security now come from within, rather than between, states. While most conflict used to sprout from inter-state warfare, as

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<sup>12</sup>2002 National Security Strategy recognized this, stating “America is now threatened less by conquering states than we are by failing ones. We are menaced less by fleets and armies than by catastrophic technologies in the hands of the embittered few.”

<sup>13</sup>Guzansky and Striem, “Yemen: Failed State”

<sup>14</sup>The ‘defacto state’ in Iraqi Kurdistan for example, actively attempted to cooperate with international organizations and regimes to address concerns with terrorism and human rights.

average state size has declined in the 20<sup>th</sup> century, the world's most disastrous and bloody conflicts now come predominantly from the sort of internal and secessionist conflicts epitomized by defacto statehood.<sup>15</sup> These conflicts inflict staggering costs on the communities they touch, with the ratio of military to civilian casualties 100 years ago being flipped on its head in the predominantly internal conflicts of the 1990s, with 8 civilian deaths to every military one.<sup>16</sup> These statistics reflect a profound change in the nature of warfare itself, where “civil conflict is [now] the most common form of warfare, accounting for all but three of the wars that broke out from 1900 to 2002 and 90 percent of civilian and combatant battle deaths during the same period.”<sup>17</sup> The implications of course extend beyond the brutality of these figures, with ongoing violence subjecting even survivors to membership in a permanent underclass of poverty and disease throughout the developing world's system of failed states.<sup>18</sup> Spreading across increasingly porous borders, these conflicts defy easy state-vs-international boundaries and threaten to destabilize other struggling sovereigns through refugee flows and the spread of ethnic tensions.

Where they arise, the defacto state holds tremendous potential benefits for instituting order in these situations. While the legitimacy of all-ready weakened sovereigns is brought into question by the sheer contrast between themselves and the capabilities of many defacto regimes, the ability of defacto states to control territory and perform the basic mechanisms of government – welfare, representation, and perhaps most importantly for conflict-ridden societies: security – offers very tangible benefits to some of the world's longest suffering people. The very real political and social capital they represent could in fact bolster rather than detract from wavering state-building endeavors, instituting rather than destroying political order over a much broader territory than has been the case in most modern states. By reflecting (rather than creating) the failure of many state projects, their institution of political order offers the very real promise of contributing to peace by aiding in the creation of stable, functioning, and integrated member states if their ongoing conflicts over representation and governance can be resolved short of the chaotic restructuring of borders. Not inherently disintegrating or destabilizing in nature, doing so need not re-open Pandora's boundary-box and lead to the sort of neo-medievalism feared by

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<sup>15</sup> Lake and O'Mahony, “Incredible Shrinking State,” 700; Holsti *Peace and War*

<sup>16</sup>Kaldor, *New and Old Wars*, 9

<sup>17</sup>Lacina and Gleditsch, “Monitoring Trends”

<sup>18</sup>For the connection between internal violence, poverty, and disease, see Krug et al, *World Report on Violence*; Bayer and Rupert, “Effects of Civil Wars”; Collier et al, *Breaking Conflict Trap*

many scholars if it can be done through the development of more inclusive state structures, benefitting both the states involved and the larger international system that rests on such norms.

Consequently, even as the current system is faced with an alarming rate of state failure, collapse, or instability that threatens the perpetuation of the state as a universal form of political order, the rise of defacto states like Iraqi Kurdistan present *both* an interesting challenge *and* opportunity. Rather than call into question the universal nature of the state system as a source of political order, defacto states actually encourage the status quo as a replication of traditional state systems and forms of political order. The challenge is thus to define a solution to the ongoing contestation over the state-building project that can both capitalize on the benefits and mitigate the risks associated with these new state forms. While making no claim to universal applicability, this dissertation enters this critical search for resolution by contributing to the growing literature on how the benefits of order brought to some of the most disorderly places on the planet by ‘defacto’ states can be accommodated within the boundaries of the current system through an examination of the history of Iraq's failed state-building project and its more recent efforts to construct an inclusive, broad-based and decentralized state that has seen the tentative re-integration of its Kurdish defacto state into the state-building project.

### **Resolving the Iraqi-Kurdish State Crisis**

The following examination of Iraq's tragic past and contemporary effort to construct a democratic state offers one potential solution to the ongoing contestation between recognized sovereigns and defacto states in the developing world through post-modern federal agreements. Tracing Iraq's failed state-building endeavor to the adoption of an ill-suited Weberian model of state-building that idealized order and centralization to the exclusion of Iraq's Kurdish minority, it argues that much of the contestation and instability witnessed by the Iraqi state since its birth into modern statehood has stemmed from an effort to create a state inimical to the very real dispersal of social and political capital endemic to its society. In the modern era, where the deployment of the sort of extreme genocidal violence against minorities that classified early European state-building was no longer an option, this set repeated Iraqi sovereigns in opposition to deeply held values, interests, and identity of an important segment of its population.

Iraqi regimes consistently created a disastrous challenge to their own state-building efforts, defined chiefly by the establishment of legitimate political order throughout the land. Fundamental to state-building, the state in fact requires legitimacy to bolster and define its capacity vis-a vis society, exemplified by the authorization of violence as a rightful exercise of authority, or the state itself ceases to exist.<sup>19</sup> The rich literature on the nature of state strength derived not from autonomy or capacity then, “but rather from the allegiance and identification of the community as a national community,” reveals how critical this is to achieving the sort of state-society understanding necessary to move the state beyond the need for coercion and indoctrination.<sup>20</sup> The state’s relationship with society goes beyond a narrow focus on resource distribution or rectification of Pareto’s suboptimal conditions, for through “political activity focused on the state, [legitimacy] sustains the ethical and moral needs of citizens,”<sup>21</sup> rendering the state more than not just a set of institutions, it is also a cultural entity that manifests and replicates itself through representations, discourse, activities, and practices that establish the meaning of public interest and solidify social identities. As such, it is an ideological project, an “exercise in legitimation of that which would be illegitimate.”<sup>22</sup>

When the state is unable to provide such an inclusive ideological project, as has been the case with repeated Iraqi regimes, it can only establish its mastery over society through the sort of overt coercion that leaves the violence of the modern state vulnerable to sustained social contestation and makes it almost impossible for it to establish itself as the paramount authority of a territory in perpetuity. This has been the centralized states greatest downfall in Iraq, whose reliance on Arab nationalism and opposition to Kurdish autonomy has rendered it unable to push beyond the material in the Kurdish areas since the downfall of the Ottoman Empire. While Western states transitioned from a reliance on despotic power to the use of infrastructural<sup>23</sup> or administrative<sup>24</sup> means of control over their populations, states like Iraq instead remained locked in the grip of quasi-legitimacy, and thus perpetually dependent on periodic bouts of repressive, destructive force against segments of their population.

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<sup>19</sup>Bobbitt, *Shield*, 17.

<sup>20</sup>Barkey and Parikh, “Comparative Perspectives,” 530: Nettl “State as Conceptual Variable,”; Corrigan and Sayer, *Great Arch*; Badie and Birnbaum, *Sociology of State*

<sup>21</sup>Krasner, “Review,” 233.

<sup>22</sup>Abrams, “Notes on Difficulty,” 76.

<sup>23</sup>Mann, *History of Power*, 476-489.

<sup>24</sup>Giddens, *Nation-State and Violence*, 172-197.

As elsewhere,<sup>25</sup> the result has been continual coups, instability, and civil conflict that defined Iraq's existence as a "soft state."<sup>26</sup> The state seeks to mask the profound underlying weakness first acknowledged at its very inception by Batatu<sup>27</sup> with brutal repressive force when faced with inevitable social dissent. In Iraq, this failure encouraged resource-fueled despotism and the deployment of "extreme levels of organized violence by the state to dominate and shape society," control state resources to the benefit of some and detriment of most, and exploit ethnic and communal divisions as a method of control over a rebellious society.<sup>28</sup> In the search for unity through homogenization and centralization, Iraq thus paradoxically became embroiled in a state of decay, forced to rely on perpetuating, encouraging, and reifying societal divisions.<sup>29</sup> A trait endemic to "soft states,"<sup>30</sup> the resulting reliance on a cyclical hurricane of violence, merely caused the further deterioration of the sort of non-coercive state capacity garnered from popular compliance. Rather than resolve contestation, the increasingly repressive state then inspires greater resistance, locking itself into a zero-sum battle for survival with important segments of its own population, in this case the large Kurdish minority.

Iraq's history, like many other developing states, reveals that prior to its federation, it had in fact become hostage to just such a cycle, relying on an increasingly smaller sub-section of 'the people.' It was Ayubi's proto-typical "fierce" state, lacking both the infrastructural and ideological hegemony necessary to join the modern state tradition,<sup>31</sup> and as Buci-Glucksmann argued, sacrificing through its violence any hope of social cohesion or ideological consensus.<sup>32</sup> In this warped state of affairs, the state became too weak and paranoid to cope with separatist movements beyond violence, too often associating constructive solutions like federalism with a lack of unity.<sup>33</sup> Thus drowning out the most basic governing logic, which affirms that the long-term unity of a state is least likely "when an important group within the population believes that the national identity conflicts with its strongly felt regional, ethnic, religious, or linguistic identity,"<sup>34</sup> Iraq fell victim to a warped and destructive perception of state strength. The

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<sup>25</sup>Decalo, *Coups and Army Rule*; Welch, *Soldier and State*

<sup>26</sup>Myrdal, *Asian Drama*

<sup>27</sup>Batatu, *Old Social Classes*, 1113.

<sup>28</sup>Paraphrased, Dodge, *Inventing Iraq*, xii.

<sup>29</sup>al-Khafaji, "State Terror and Degradation," 18-19.

<sup>30</sup>Gunnar, *Asian Drama*

<sup>31</sup>Ayubi, *Overstating the Arab State*, 3.

<sup>32</sup>Buci-Glucksmann, *Gramsci and State*

<sup>33</sup>Anderson, *Federalism*

<sup>34</sup>Ibid, 71.

militarization of society did not in fact make the state more secure, but instead became the source of its repeated destruction through internal coups or devastating external wars.

Unfortunately this constricted thinking further obscures the choice that all divided societies must make, as Anderson notes, between meeting diversity with “repression, exclusion, and assimilationist policies...[that] often worsen the problem” or “embracing diversity as a national value” which can enhance unity. It drowns out basic governing logic, which affirms that the long-term unity of a state is least likely “when an important group within the population believes that the national identity conflicts with its strongly felt regional, ethnic, religious, or linguistic identity.”<sup>35</sup> Even the most diehard Iraqi nationalists concede after all that there is little support for the ideological and cultural unity amongst Iraqi Arabs and Kurds,<sup>36</sup> and the communal violence that swept Iraq after the Ba'athist overthrow revealed in fact just how failed the previous policy had been at overcoming Iraq's communal divisions.<sup>37</sup>

The importance of the change promised through the installation of federal institutions in the Iraqi Constitution thus cannot be underestimated and goes beyond the more-oft-touted democratization. In fact, democracy itself cannot survive in Iraq without the preservation of its federal character, which alone guarantees the social, economic, political, and coercive dispersal of power necessary to maintain a free expression of Iraqi interests. Indeed, negotiated federal agreements can offer contested states like Iraq a viable alternative to their dismal history of failed attempts at centralized state-building by funneling state energy into more practical efforts that reflect the contemporary dynamics of their diverse societies. By restricting the responsibilities and obligations of the central state to more manageable tasks while dually creating a mechanism for a minority buy-in to these institutions that pull previously contentious social sources of power into legitimate state institutions, federal solutions can increase the strength of the state and its ability to influence society through non-coercive measures, extending rather than restricting the state's reach.

In so doing, federalism has acted to combat rather than deepen state fragmentation in the right institutional context. Indeed, Iraq's system is not wholly different from the post-modern

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<sup>35</sup>Ibid.

<sup>36</sup>Visser, *ibid.*

<sup>37</sup> Contrary to what some have argued, Iraq's divisions did not appear post-war. The divisions in Iraq were merely suppressed by the violence of the Iraqi regime. The parties that represented the opposition to Saddam's regime had always been based in Iraq's ethno-sectarian groups. America did not so much instigate the rise of ethno-sectarianism, but become trapped by its reality.

federalist practices that successfully preceded it, resting on a philosophical tradition for state-building that seeks to contend with more fragmented sources of authority and decision-making in order to build a state that is strong, dispersed *and* embedded in its society. Rejecting the ephemeral quest for the sort of unity found in early modern European statehood, it recognizes and conforms to the constraints of modern state-building in highly fractious societies.

In order to understand how this compromise has transformed the foundation of the Iraqi state, this dissertation consequently analyzes the foundation of the Iraqi political system in relation to a long tradition of political philosophy that informed its drafting and argues in favor of a continued adherence to post-modern federal norms in adjudicating any conflicts between its people. The second chapter contains an extensive review of the theoretical foundations of the modern state, the challenge presented to this early model in the post-modern era, and the potential resolution of these rising challenges through post-modern federalism in failed or failing states. This theoretical overview informs the analytical description of Iraq's despotic history and contestation with its Kurdish population in the next chapter, which presents a historical overview of failed attempts at devolution and the consequences for internal and regional stability presented by the perpetual, disastrous recentralization of the Iraqi state.

The fourth chapter synthesizes and contrasts this history with the new Iraqi federal state, contending through an examination of the norms under-girding the new Iraqi Constitution that federal institutions have begun a gradual but persistent shift toward a form of political contestation and inclusion that lays the foundation for resolution of disagreements through the institutions of the state and a genuine, inclusive state-building process that will eventually benefit all Iraqis and bolster the democratic character of its state institutions. Throughout this investigation, the argument is maintained that while the compromises made to build an Iraqi federal state have challenged the traditional conceptions of sovereign state authority as practiced in most late developing nations, the autonomy of the Iraqi Kurds importantly demonstrates the potential to rebuild 'failed' or 'collapsed' states by capitalizing on the empirical ability of defacto states to govern previously unruly territory, allowing defacto states and their representatives to share in the legitimacy of sovereign authority, binding defacto states to international norms through this legitimacy, and positively restricting the operating space for failed sovereigns into more manageable, governable territories and obligations. In Iraq, this has included a profound shift from Kurdish authorities' traditional opposition to the state to a new pivotal role in holding

divergent factions of the Arab majority together, which has positively contributed to rebuilding the Iraqi state. Not only has the institutional power of the state been extended, but through its co-option of divergent sources of social order, it has laid the groundwork for a process of strengthening at the core as well.

However, the fourth chapter recognizes that this model is still contested by some leaders in Baghdad, tracing the path of the two key outstanding issues left unresolved: the exploitation of Iraq's vast natural resources and the territorial delineation of its disputed internal boundaries. The chapter attributes the roots of the difficulties in implementing the compromises found in the Iraqi Constitution to ongoing adherence to the failed centralized and unitary vision of state strength rooted in Iraq's bloody and tumultuous past.

The penultimate chapter consequently uses this outline to construct the parameters for resolution of these issues in a way that will bolster Iraq's nascent experience with federalism as the best opportunity to bind together its contentious society and overcome the greatest demon to the construction of a cohesive and stable modern state: resource-fueled despotism. It argues that, given the dismal record for such a governing model, the outstanding issues between the Regions and the federal government should be adjudicated with an eye to preserving the vitally important federal nature of the new regime. While this naturally requires some dispersal of social and political power, it does not preclude the establishment of a vibrant national culture that can be shared by all Iraqis. Finding such a resolution requires not dogmatic adherence to formulaic answers about state strength based on an outdated and ill-suited European model, but instead an approach embedded in the particularities of the Iraqi case whose greatest demon has always been its tendency toward resource-fueled despotism.

The final chapter summarizes the argument presented, and contextualizes the Iraqi experience within larger debates over defacto statehood in the international system of states. It reiterates the importance of resolving the long contestation of the Iraqi state through post-modern federal guarantees in order to bolster the Iraqi state-building experience, but also ties this to the larger processes at play in resolving the challenge presented by the ongoing failure of state-building to the international system. In so doing, it contends that international security guarantees would greatly increase the odds of a successful outcome in Iraq that will not only bolster the state-building project there and aid in the reconciliation of a century-long civil war between the Kurdish minority and Arab majority, but also send an important signal to other struggling and



defacto states that changing international norms offer a solution short of secession or destruction, and move international theory towards a healthy congruence with the changing historical patterns of political development.

## CHAPTER 2

### The Foundation and Norms of the Modern State System

There is little doubt that the modern nation-state has become the predominant form of political organization across the globe. While this fact is supported by all major schools of thought in International Relations theory, this dissertation approaches the interplay of states in the international system from a distinctive tradition related to the rationalist, Grotian or English school of thought. This approach sees the system of states as working in line with a practical association based upon “a framework of common practices and rules capable of providing some unifying bond where shared purposes are lacking.”<sup>38</sup> Rather than the purely anarchical system articulated by those of the realist tradition, the rationalist perspective takes into account the importance of legitimacy, norms, and associations that bind states into a particular form of community. In so doing, it seeks to explain not just conflict, but also the immense amount of cooperative and non-coerced behaviour that takes place between states in the international system.

The importance of norms, values, and practice in the interactions between states is clearly evident in the current system. As such, this study also finds the insights of a thin version of the emerging critical or post-modern school of thought as useful in examining the continued adherence to political forms of states and sovereignty. In the study of quasi (and consequently) defacto-states and ethnic conflict, these perspectives combine to help explain why an international system alleged to be solely based on force and self-reliance can continue to not only tolerate, but protect the legal jurisdiction of quasi-states unable to defend themselves against either internal or external threats. Likewise, the post-modern focus on the social construction of norms helps explain both why the international community continues to deny defacto states full sovereignty and the potential for an evolution through social processes and interactions within and between states to seek a creative solution to many inter-communal conflicts and the defacto dilemma. While a discursive examination of all these topics would be beyond the scope of this work, the overall approach of taking into account the constructed meanings of norms and recognizing that the current order of things is neither immutable nor natural is very helpful to the prescriptions proposed.

On the state-level, this approach is complimented and strengthened when it also seeks to understand the way that certain institutions and structures impact social relations and construct

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<sup>38</sup>Nardin, *Law, Morality, and Relations*

incentives for group action. The evolution of institutions, structures, and the international system alongside a set of norms that idealized and legitimized a centralizing, strong state changed the social dynamics and interaction patterns of certain groups, laying the foundation for conflict and contestation over the state project. Thus, a more fluid and flexible normative approach that encourages institutional relationships that provide alternative sources of state-society relations, mediation of social conflicts, and more incorporating institutions of shared power have the potential to resolve long-standing contestation. The importance of norms, values, and institutions at both the international and state level are consequently examined, with the understanding that these processes compliment and impact each other in very profound ways.

This aims to contribute to the emerging literature on the post-Cold War evolution of state-building theory through an examination of the impact of the state system on state-society conflicts in Iraq. While its approach as a case study of the Iraq-Kurd dilemma inevitably causes a focus on specific domestic issues, the argument has implications for the underlying aspects of the international system of states, its norms, and its structure on the development of political order among and within its members, in part due to the more fluid and porous boundaries between these levels of analysis and action in weak states. The case is implicitly made that continuing and increasing levels of secessionist movements and the emergence of defacto state areas of order amidst state-level disorder since World War II have been promoted in some states by a group of inter-related factors that include: (1) the spread of an idealized form of statehood best exemplified in the work of Jean Bodin, Max Weber, and Thomas Hobbes (2) the continued adherence of leadership in many states to this idealized Weberian model, despite the demonstrated lack of practicality for many new states to achieve its requirements given their extremely diverse populations, social fissures, and changing international norms on coercive force, (3) a change in state-society interactions alongside international opportunities and resources that encourage the continued maintenance of social movements and defacto states in some quasi-states despite rejection as potential sovereigns, and (4) the simultaneous adoption of contradictory norms throughout the globe that prevent the consolidation of states through traditional methods of coercion or accident but still hold political communities to the outdated ideals of sovereignty that sprung from them. Having thus identified both normative values and their institutional expression as a core source of ongoing conflicts in many states, the dissertation recommends a fundamental normative and institutional shift at both the state and international level that recognizes a more

fluid, nuanced model of state-building based on an acceptance of social diversity and new forms of divided sovereignty, namely through the construction of post-modern federal regimes.

A review of important themes in support of these points follows, and is used to illuminate the current impasse between defacto states, their home states, and the international society of sovereign states, particularly in the context of the Iraqi case in subsequent chapters. This background and the historical context of the Iraqi-Kurdish case found in chapter 3 inform the study's finding that the solution to overcoming the current impasse while contributing to the spread of political order and decreasing the risk for future violence, must allow for the incorporation of the Kurdish defacto state and the rival sources of social and political order it represents into a viable system of legitimized governance in Iraq, without undermining the currently held norms that prevent state disintegration or extreme aggression against civilians. Using the Iraqi example, a particular path forward is found through an emphasis on the evolution of post-modern federal norms regarding non-state political communities as a mechanism for conflict resolution, encouraging movement away from overly-centralized Weberian models of statehood towards more loose federal principles and flexible definitions of sovereignty. The conclusion upholds that since the evolution of norms and patterns of interactions in these countries will take time to change, the success or failure of these negotiated settlements between conflicting parties rests on an active, sustained, and believable international commitment to a new set of values and practices that can provide the security guarantees necessary for norms and institutions at the state level to embed themselves in their societies.

### **The Rise of the Weberian Ideal**

While many political entities have undergone a disappointing century of state-building, even the large number of 'quasi-states'<sup>39</sup> that exist in the international system today are compared against the modern, bureaucratic ideal that originated in Western Europe.<sup>40</sup> While this form of statehood differs greatly from the majority of states in today's system, a thorough understanding of its characteristics are important for understanding the behaviour and actions of many developing states because of its universal adoption as "the" legitimate or ideal form of political community. Despite their failures to accomplish this ideal type, the security assured by the unitary

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<sup>39</sup>Jackson, *Quasi-States*

<sup>40</sup>Weber, *Economy and Society*; Risse and Lehmkuhl, "Governance in Areas"

Weberian state described by early modern European historians remains a beacon for many leaders in the developing world. Understanding the foundations of the Weberian state also reveals the historical and situational differences between its appearance and the prospects for developing nations like Iraq in seeking to follow its path in the world today.

Characterized by Weber as a corporate group that has compulsory jurisdiction, the capability of continuous organization and maintenance of a powerful monopoly over its people and the use of force within its jurisdiction,<sup>41</sup> the state system that developed in Western Europe was grounded in the empirical and distinguished through its capabilities, rather than its juridical status in international law.<sup>42</sup> As Herz describes the political philosophy of the time, the decisive criterion for recognizing a sovereign was “actual control of one’s ‘estates’ by one’s military power, which” must also be capable of excluding “any other power within and without.”<sup>43</sup>

The spread of this system of political organization occurred through a variety of processes, but when seeking to explain this seemingly universal appeal of the modern nation-state,<sup>44</sup> most writers agree that its ability to perform the functions of modernity more ably than its rival political forms played a significant role, differing mainly over whether this success was due to superior war-making capabilities,<sup>45</sup> economic and bureaucratic organization,<sup>46</sup> mutual recognition of legitimacy,<sup>47</sup> or even a smidgeon of chance.<sup>48</sup> In reality, all of these capabilities aided the formation of the modern nation-state. No one particular factor explains the emerging consensus away from the myriad forms of political community seen previously in the international system to the universal system of states. Rather, the state’s ability to control resources, mobilize sentiments and loyalties, collect taxes, and conduct war along with the historical breakdown of other forms of community aided the spread of the Weberian state across Europe and then the rest of the world as it was able to build on new technology to create larger political communities that were militarily, economically, and socially more cohesive than rival political forms.

This new form of political community was epitomized in Weber’s classic definition of:

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<sup>41</sup>Weber, *ibid*, 156.

<sup>42</sup>Jackson and Rosberg, “Why Africa’s Weak States,” 2

<sup>43</sup>Leibniz paraphrased in Herz, “Rise and Demise,” 478-479.

<sup>44</sup>Support: Bull and Watson, *Expansion of International Society*; Miller, “The Sovereign State”; Against, Wendt and Barnett, “Dependant State Formation,” 321-347.

<sup>45</sup>Tilly *Big structures, large processes*; Bean, “War and Birth,” 203-221

<sup>46</sup>Rasler and Thompson, *War and State Making*; Lachmann, “Origins of Capitalism”; Marx and Engels, *The Communist Manifesto*

<sup>47</sup>Spruyt, *The Sovereign State*; Ertman, *Birth of Leviathan*

<sup>48</sup>Mann, *Sources of Social Power*, 2-3.

“A ‘ruling organization’ will be called ‘political’ insofar as its existence and order is continuously safeguarded within a given *territorial* area by the threat and application of physical force on the part of the administrative staff. A compulsory political organization will be called a “state” insofar as its administrative staff successfully upholds the claim to the *monopoly* of the *legitimate* use of physical force in the enforcement of its order.”<sup>49</sup>

The Weberian nation-state thus differed from its feudal predecessors both in size and complexity,<sup>50</sup> and from empires because of its increased administrative tasks, extreme centralization of authority enabled by improvements in technology,<sup>51</sup> economics,<sup>52</sup> weaponry,<sup>53</sup> and administration,<sup>54</sup> and fixed territoriality.<sup>55</sup> It was the master of its domain, able to mobilize the largest per capita armies in history and extract ever-larger sums from its population to support its military and bureaucratic machine. It was thus increasingly defined according to Skowronek by four key characteristics: “[1]the concentration of authority at the national center...[2]penetration of institutional controls from the government center throughout the territory...[3]the centralization of authority within the national government...[4]the specialization of institutional tasks and roles within the government.”<sup>56</sup>

The centralization of authority and penetration of the state became increasingly necessary as the population density of Western Europe began to expand more rapidly around the 11<sup>th</sup> century, thus increasing competition over land which challenged the traditional empires that had governed the region with comparatively flexible, oscillating borders and tributary systems. The development of the modern state consequently started out as a means of creating more stable, defensible polities that could extract the rising value of both land and labour, as well as

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<sup>49</sup>Weber, *ibid*, 58.

<sup>50</sup>Johnson and Percy, *Age of Recovery*

<sup>51</sup>Riggs, *Administration in Developing Countries*, 379-380.

<sup>52</sup>North and Thomas, *Rise of Western World*.

<sup>53</sup>McNeil, *Pursuit of Power*; Bean, *ibid*, 203-221.

<sup>54</sup>Environmental, technological, economic changes: Herlihy, “Ecological Conditions”; Ladurie, *Times of Feast*; Hohenberg and Lees, *Making of Urban Europe*.

<sup>55</sup>Empire boundaries were more fluid: Wallerstein, *Modern World System*; Kratochwil, “Systems, Boundaries, and Territoriality”; Lattimore, *Studies in Frontier History*; Fixed territoriality of modern state: Klink, “Absolute Territorial Sovereignty”

<sup>56</sup>Skowronek, *Building a New American*, 20.

addressing the resulting social changes in class dynamics.<sup>57</sup> This new state, as Bean argues, existed in a world where competition tended to “eliminate firms whose size is outside the optimal range,” which was ultimately determined by “the interaction of centripetal and centrifugal forces.” Under this model, “states larger than the optimal range tend to disintegrate, and those smaller tend to be absorbed,” with the key determinants raising the cost of administration and control being “language, religious and racial barriers and regional particularism.”<sup>58</sup> In other words, processes of natural selection operating on the basis of Boulding’s calculation of “the law of diminishing strength” or “the further the weaker,”<sup>59</sup> determined the boundaries of the modern state system that arose in Europe as states sought to draw together often disparate populations through the expansion of state control. The result was more culturally and socially unified politics, dependent upon homogenized cultural exchanges. Areas that effectively resisted homogenisation eventually formed their own states or were incorporated into other states more capable of integrating them.

Once formed, and at least in part due to its newfound social and cultural unity, the Weberian state, with its ability to raise taxes and mobilize armies was an undeniably effective fighting machine, capable of destroying competitors that did not follow suit.<sup>60</sup> In particular, states were able to take advantage of more complex economic trading and labour specialization, which had greatly increased the value of maintaining stable borders by sustaining standing professional armies. As both Bean and Tilly describe, once a state had adopted the Weberian bureaucratic structure, surrounding political communities were faced with two choices: enact similar reforms or face coercive incorporation.<sup>61</sup> Herz calls this transformation of the imperatives of political survival the “gunpowder revolution,” which “caused a real revolution in the superstructure of economic, social, and political relationships because of its impact on the units of protection and security.”<sup>62</sup> Borders naturally fluctuated in the state formation process as groups were incorporated, removed, moved to other competing states with improved capabilities, or melded into their own unique states. At its heart then, the state-building process in early modern Europe was deeply rooted in the use of coercive force, both against potential competitors and its own society.

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<sup>57</sup> Moore, *Social Origins of Dictatorship*

<sup>58</sup> Bean, “War and Birth,” 204.

<sup>59</sup> Boulding, *Conflict and Defense*, 231.

<sup>60</sup> Ardant, “Financial Policy and Economic”; Lane, *Profits from Power*; Lane, “Economic Consequences of Organized”

<sup>61</sup> Bean, *ibid*; Also description of the French Capetians, Elias, *Civilizing Process*, Vol 2

<sup>62</sup> Herz, “Rise and Demise,” 476.

Thus, the military and bureaucratic might of the modern nation-state on the international level was ultimately only one factor in its long-term success, a reflection in fact of the changing nature of state-society relations. Equally important to establishing its hegemonic status as the sole form of recognized political order were state-level sociological factors, namely its increasing dominance over its own society. As Spruyt demonstrates in his comparative approach to the evolution of the modern state system, other forms of European political order were successful into the modern era despite the drastic changes that occurred from the 13<sup>th</sup>-15<sup>th</sup> centuries.<sup>63</sup> Consequently, the modern territorial state was not a foregone conclusion. Instead, as Ruggie argues, the “modern system of states is socially constructed,”<sup>64</sup> and thus illuminated by Walzer as personified, symbolized, and imagined before becoming “reality.”<sup>65</sup> The modern territorial state was not merely a matter of inevitability, but was constructed out of a changing set of norms and a revived emphasis on Roman values such as the ownership of personal property, thus allowing for both the evolution of individual and sovereign rights to defined territorial units.<sup>66</sup> This was most often a heavily coerced transformation that involved the complete destruction of alternatives sources of social and political legitimacy throughout the state’s domain, culminating in a Hegelian triumph of the state, seen as a moral expression of unity over diversity.<sup>67</sup>

Not surprisingly then and related to this focus on the social dynamics leading to the emergence of a global state system, the importance of the ideological underpinnings of early states in nationalism<sup>68</sup> was a critical tool for expressing a sense of self in increasingly large political communities. The power of nationalism could be witnessed in the decline of mercenary forces during this period, in favour of national citizen armies and it was this process that drove the

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<sup>63</sup>Spruyt *ibid.*

<sup>64</sup>Ruggie, “Territoriality and Beyond,” 152.

<sup>65</sup>Walzer, “On Role of Symbolism,” 194-195.

<sup>66</sup>Ruggie, “Continuity and Transformation,” 151-157; Anderson, *Lineages of Absolutist State*; Gross, “Peace of Westphalia”; Hinsley, “Concept of Sovereignty”; Berki, “On Marxian Thought,” *World Politics*; Elias, *The Civilizing Process*; Humanities, Edgerton, *Renaissance Rediscovery*; White, *Birth and Rebirth*; Connection to political changes, Martines, *Power and Imagination*; Argan, *Renaissance City*

<sup>67</sup>Held, “Introduction.” As Held uses it, the term Hegelian in this dissertation is used to describe a particular and narrow form of Hegelian state philosophy which focused on the expression of the state as the ultimate expression of “community.” The normative view that the unrivalled state should and can act as a socio-political project that replaces the “nation” or other social attachments with the universal and exclusive source of community for the individual. Hegelian state philosophy of course is typified by a much wider range of scholarship, but it is this use of the term, which views the state as the only legitimate expression of a unitary socio-political project that most readily and broadly translated to new states in the developing world. The state was the rational and total embodiment of ‘the’ people, not “peoples.”

<sup>68</sup>Anderson, *Imagined communities*; Krasner, “Review,” 242; Hobsbawm and Ranger, *Invention of Tradition*



military might of the modern state.<sup>69</sup> States increasingly used new institutions and processes to advocate a “unitary” vision of society, aiming to ultimately “overcome local ethno-cultural diversity and to produce standardized citizens whose loyalties to the nation [and its state] would be unchallenged by extra-societal allegiances.”<sup>70</sup> The nation-state and its society were thus intimately intertwined through this process, with the state representing the ultimate expression of a people, setting them apart from other political communities through a unique set of cultural expressions and practices. As Nagengast articulates:

“Among the primary goals of the modern, post-Enlightenment state are assimilation, homogenisation, and conformity within a fairly narrow ethnic and political range, as well as the creation of societal agreement about the kinds of people there are and the kinds there ought to be. The ideal state is one in which the illusion of a single nation-state is created and maintained, and in which resistance is managed so that profound social upheaval, separatist activity, revolution, and *coups d’etat* are unthinkable for most people most of the time.”<sup>71</sup>

Ultimately, this involved definition of who belonged and who was to be excluded from the society at large, demanding a process of acculturation and assimilation that would be categorized by modern standards as ethnocide in many cases.<sup>72</sup> It was only through this process however, that the modern state could effectively centralize its authority and eliminate local sources of rivalry for legitimate political authority at the state level and defend itself against the encroachment of other states, which might seek to take advantage of social cleavages to form rival state projects, at the international level.

As states solidified then on national bases and sought to increasingly control the loyalty of their populations through universal recognition of their authority, they also sought legitimacy for their new type of political community through a system of mutual recognition also based in sociological processes at the international level. As Martin Wight describes, the system of states became a society, because “while claiming sovereignty for itself, [the state] recognized that every

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<sup>69</sup>Decline of mercenarism, Thomson, “State Practices, International Norms,” 23-47; Gooch, *Armies in Europe*; While 90% of the world’s armies today recruit exclusively from their own territory, the situation was reversed 200 years ago.

<sup>70</sup>Robertson, “After Nostalgia?” 49.

<sup>71</sup>Nagengast, “Violence, Terror, and Crisis,” 109.

<sup>72</sup>Torpey, *Invention of Passport*

other state had the right to claim and enjoy its own sovereignty as well.”<sup>73</sup> In so doing, a more stable system of states was created whereby, as Strang notes, “the status of each state is thus tied up with that of the others in a continuing process of mutual legitimation.”<sup>74</sup> While periodic wars in search of empire would continue to appear, the international society of states could now effectively act in concert to suppress any challenge to its system of political order,<sup>75</sup> and thus became stronger and more continuous than the peculiarities of its parts. As described by Oppenheim, “through recognition only and exclusively a State becomes an International Person and a subject of International Law.”<sup>76</sup>

All of these forces thus converged in a process leading to the first global system of political organization, characterized by an empirical commitment to Weberian statehood,<sup>77</sup> but underpinned by sociological processes at both the state and international level that were committed to the unitary, territorial state as the legitimate form and practice of power. The new global sovereign state system grounded the state in international law as a legal person with, a defined territory,<sup>78</sup> permanent population, effective government, and independence from other political entities. The state was to be duly administered through centralized legislative and administrative organs,<sup>79</sup> with the core of the new system resting on the concept of sovereignty, or the right of each sovereign to independence and supreme authority over its realm. At both the state and international level, Weberian institutions would be the sole legitimate expression of the people, defining both “us” and “them” and subjugating rival identity markers.

The realms of these new communities were precisely denoted, with fixed boundaries that avoided any confusion over legitimate authority, thus making “determinate and recognized frontiers...a basic institution of the state system and an essential legal attribute of any state.”<sup>80</sup> The period of “constitutive wars,”<sup>81</sup> where the very issue of who could legitimately engage in

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<sup>73</sup> Wight, *Systems of States*, 135; Butterfield and Wight, (eds) *Diplomatic Investigations*; Bull and Watson, *Expansion of International Society*; Watson, *Evolution of International Society*

<sup>74</sup> Strang, “Anomaly and Commonplace,” 148

<sup>75</sup> Dehio, *Precarious Balance*

<sup>76</sup> Oppenheim, *International Law*, 125.

<sup>77</sup> Easton, *Political System*, 90-124

<sup>78</sup> This stood out in marked contradiction to the tangled web of Middle Ages’ authority: Strayer and Munro, *Middle Ages*; Kratochwil “Of Systems, Boundaries.”

<sup>79</sup> Brownlie, *Principles of Public*, 73-76.

<sup>80</sup> Jackson and Rosberg, *ibid*, 13.

<sup>81</sup> Ruggie, *ibid*, 163.

combat or wield the authority of a political community had at least temporarily ended in Europe<sup>82</sup> with the vestment in the state of the only legitimate means of providing for political order internally and fighting external wars on behalf of the political community.<sup>83</sup> In the words of Charles McIlwain, “independence *defacto* was ultimately translated into a sovereignty *dejure*,”<sup>84</sup> where a successfully upheld claim to authority was legitimized through sovereign norms vis-a-vis the states’ own society and the international society of state.

Instead of “constitutive wars,” boundaries would now be altered or moved according to the results of wars between mutually recognized sovereigns. This manipulation of the location of boundaries would become an important foundation in the stability of the system, providing the necessary mechanism for maintaining a balance of power between competing sovereigns and reflecting the changing fortunes of more or less successful attempts at building political communities.<sup>85</sup> Naturally then, it would also drive or hold natural communities together that feared annexation or annihilation by larger groups. Society relinquished itself to the homogenizing and centralized sovereign, binding itself into a larger community and subjugating alternative loyalties to that of the newly constructed “nation” in return for stability and protection.

Under the protection guaranteed by the mutual recognition of sovereigns, the state thus evolved into a form of political organization that fulfilled three main objectives in the political science literature, namely providing security, representation, and welfare.<sup>86</sup> It was a juridical and empirical abstraction that was grounded in “an ideological underpinning, an ethical code, or a cultural vocation that inspires that state.”<sup>87</sup> While even “strong” or “hard” states often failed to provide in all three areas simultaneously,<sup>88</sup> the model of the state as exported from Europe became an “ideal” type that held potent sway over the political organization of the globe as modern nation-states engaged in imperial and colonial projects.

By the mid-twentieth century the major powers of the new state system had effectively divided up the globe into replicas of themselves, treating new sovereigns based on often haphazard colonial boundaries as the legitimate political order in their respective territories, thus

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<sup>82</sup> Kosellek, *Futures Past*

<sup>83</sup> Guenee, *States and Rulers*; Greville and Pocock, *Machiavellian Moment*; Contamine, *War in Middle Ages*

<sup>84</sup> McIlwain, *Growth of Political Thought*, 268.

<sup>85</sup> Mayall, *Nationalism and International Society*; Coplin, “International Law and Assumptions”

<sup>86</sup> Milliken and Krause, “State failure, state collapse,” 756

<sup>87</sup> Ayubi, *Overstating*, 30-31.

<sup>88</sup> Risse and Lehmkuhl, *ibid*, 3. Also Mann’s work on France, even states central to the process experienced a great deal of inefficiency, corruption, and ineptitude well into the modern era, *Sources of Social Power*

bestowing upon them incalculable benefits despite their often dubious ability to actually control territory under their jurisdictions or “represent symbolically the existence and unity of the political community” as their predecessors had done.<sup>89</sup> As Krasner argues, “sovereignty was never quite as vibrant as contemporary scholars suggest,” with conventional norms under constant challenge, few states ever achieved the complete unity to which they aspired normatively,<sup>90</sup> yet the ideal of what a state should look like based on the logic of early Europe continued to drive behaviour at both the international and state level.

Thus despite its often suspect performance and bearing testimony to the hegemony of the nation-state system and its roots in sociological processes, even when modern scholars have tried to explain the failure of many states, few have been able to flesh out what an alternative would look like.<sup>91</sup> Rather many mainstream scholars have focused on how to achieve a liberal, bureaucratic state through alternative routes such as military authoritarianism,<sup>92</sup> institutionalization before liberalization,<sup>93</sup> the destruction of the power of local elites that challenge the central state,<sup>94</sup> an adjustment of the political calculus that leads to economically detrimental policies,<sup>95</sup> or other more technocratic and holistic solutions.<sup>96</sup>

These approaches unfortunately focused on the symptoms of a much larger problem rooted in the failure of the homogenizing and centralized Weberian state to create a normative and institutional project that could capture or defeat social competitors inside the artificial boundaries bequeathed many states through the de-colonization process. Changing norms at the international level that sanctified many states (like Iraq) that would have otherwise been destroyed in the Hobbesian world of early Europe before the community of states had fully developed, could limp along under the new rules of the game. Consequently, many states, having been created from external sources of coercive force and unable to engage in the sort of destruction of rivals on both the state and international level that their predecessors used to establish unitary, strong,

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<sup>89</sup>Krasner, “Review,” 228

<sup>90</sup>Krasner, “Sovereignty,” 20.

<sup>91</sup>Post-modernist critique: Ruggie, “Territoriality and Beyond”; Rosenau, “Once Again into Fray”

<sup>92</sup>Huntington, *Political Order*; Often referred to as Bureaucratic Authoritarianism, O’Donnell, *Modernization and Bureaucratic-authoritarianism* and “Reflections on Patterns,” 3-37; Hirschmann, *Bias for Hope*; Malloy and Seligson, *Authoritarians and Democrats*; Collier, *New Authoritarianism* ; Also applied extensively to state-making in Asia: Im, “Rise of Bureaucratic-Authoritarianism “; Haggard, *Pathways from Periphery*; Crouch, *Army and Politics* ; Han, “Political Institutionalisation,” 116-137; For Middle East, Barkey, *State and Industrialization Crisis*

<sup>93</sup>Paris, *At War’s End*

<sup>94</sup>Migdal, *Strong Societies*

<sup>95</sup>Bates, *Markets and States*

<sup>96</sup>Milliken and Krause, “State Failure, State Collapse”

homogenous Weberian states – were birthed into life with institutions and normative values out of place with their particular societies and time. Striving inevitably toward a perpetual dead-end, only a change in the “ideal” and normative values that under-girded the extreme centralization of early European state-society relations could begin to address the conflicts found in many of these new states. Despite what many critics have claimed, these states were not completely without logic but were ill-suited to the sort of processes that drove the creation of Weberian states in early Europe.

### **Weberian Sovereignty as an International Force in the Post-Colonial Era**

Modern state-society conflicts are clearly embedded in a particular time and space, but also in the particular society of states to which they are members. Modern states are thus heavily influenced by a unique set of international norms and values associated with the post-World War II era, which through its fundamental re-ordering of the requirements for membership intimately impacted the evolution of its members and constrained their paths to development. Before the end of World War II, weak political units were most commonly eliminated by alternative state projects and despite the theoretical respect among sovereigns for one another’s rule, territorial expansion through conflict was a common reality. As described earlier by Bean, the boundaries of the European modern state were based upon optimizing conditions, whereby the state received diminishing returns for enlarged size when faced with the increased administrative and control costs of expanding across linguistic, religious, racial, and regional barriers and thus states that were too large disintegrated and those too small were absorbed.<sup>97</sup>

However, after two wars that decimated the power centres of the global system, colonialism’s normative and financial exhaustion, and the revelation of incredibly destructive nuclear weaponry, a new set of normative values that highlighted the de-stabilizing aspect of territorial changes and emphasized a particular type of self-determination created a more rigid boundary system than had existed in any previous epoch.<sup>98</sup> This evolution of normative values and corresponding institutions at the international level especially witnessed through the end of super-power expansion brought on by the Cold War, combined with the spread of anti-colonial-based national movements throughout the developing world, froze “the political map in a way

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<sup>97</sup> Bean, *ibid.*

<sup>98</sup> Jackson, *Quasi-States*

which has never been previously attempted.”<sup>99</sup> As Kayaoglu points out in his research on the abolition of extraterritoriality in legal systems, it was not until the leading Western states began to abolish the practice after World War 1 that the new norms of Westphalian sovereignty and exclusive territoriality were employed as universal and inalienable concepts across the global spectrum of political sovereigns.<sup>100</sup>

These changes fundamentally impacted the potential for state-building in weak states throughout the developing world, such as Iraq, limiting the ability of state borders to reflect the failure of particular models or forms of state-building through the re-organization of member states. The development of international norms resistant to the challenging of post-World War II boundaries, upended Tilly’s classic story of the formation of the modern state with casual relationships leading from a “change or expansion of land armies (2) new efforts to extract resources...(3) the development of new bureaucracies and administrative innovations (4) resistance...(5) renewed coercion” and finally ending in “durable increases in the bulk and extractiveness of the state.”<sup>101</sup> Instead international norms now protected often haphazard state boundaries and was marked by legitimising legal concepts such as *uti possidetis* (Latin for: “as you now possess”) which developed in Latin America as a means of preventing endless territorial wars and claims between the colonial creations of the Spanish and Portuguese Empires. The concept solidified existing boundaries as the only legitimate configuration of interaction between states. Its success in this regard allowed it to spread to other regions as their decolonisation process picked up steam and weak rulers suspiciously eyed their neighbours from a perspective of often-profound domestic weakness. Adopted as a founding principle of the Organization of African States for example, its acceptance in a wide array of border disputes led to the 1986 determination by the International Court of Justice that it was of universal applicability.<sup>102</sup> Universal applicability came to apply not just in wars between states, but also a means of fixing boundaries against the dissolution or breakdown of states due to internal conflicts,<sup>103</sup> which was often the more real threat to the survival of many new states.

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<sup>99</sup> Mayall, *Nationalism and International Society*, 56.

<sup>100</sup> Kayaoglu, “Extension of Westphalian Sovereignty”

<sup>101</sup> Tilly, “Reflection,” 73.

<sup>102</sup> Pegg, *International Society*, 122; Naldi, “Case Concerning Frontier Dispute”; Lapidoth, “Sovereignty in Transition”

<sup>103</sup> Kamanu, “Secession and Right”; Jackson and James, “Character of Independent Statehood,” 3-25; Weller, “International Response to Dissolution”

The primary objective of international society thus became, according to Jackson and Rosberg, the “legal protection for member states from any powers, internal and external, that seek to intervene in, invade, encroach upon, or otherwise assault their sovereignty.”<sup>104</sup> This new system based on mutual recognition was incredibly stable even outside of Europe. Speaking to the power of the socialization of outside political communities into the modern state system, research over 5 centuries of non-European sovereignty reveals that only 11 non-European polities recognized as sovereign were formally subordinated as dependencies and only 15 times were they ever merged or dissolved, which stands in “sharp contrast” to the frequency with which “unrecognised polities are subordinated and colonial dependencies merge, dissolve, or are transferred between Western powers.”<sup>105</sup>

This was not surprising in a world governed by a new logic, summarized by Former UN Secretary-General U Thant speech at a 1970 press conference when he stated, “As far as the question of secession of a particular section of a member state is concerned, the United Nations’ attitude is unequivocal...[it] has never accepted and does not accept and I do not believe that it will ever accept the principle of secession of a part of its member states.”<sup>106</sup>

Rather than based in the logic of early European states then, which went through an empirical process grounded in sociological transformations whereby they were forced to create national projects and destroy potential rivals, many of the new 20<sup>th</sup> century states were born into existence as bulky, unsustainable administrative giants with little actual extractive or authoritative control over their populations.<sup>107</sup> As David Strang points out, “what Weber takes for the special distinguishing characteristic of the state—namely, a successfully upheld *claim*” has substituted for other standards in modern international relations,<sup>108</sup> and that, in line with the work of James, the claim that matters is now the one within the international community, “rather than the *internal* claim to constitutional independence”<sup>109</sup> that represented the forced or accepted reign over a particular society by a state. State institutions consequently came to draw their legitimacy not

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<sup>104</sup>Jackson and Rosberg, *ibid*, 13.

<sup>105</sup>Strang’s research shows that in this same time period that only 26 changes in status occurred in recognized sovereign states, 436 occurred in dependent states, and 274 in unrecognised states. In those involving recognized sovereigns, most were peaceful mergers and dissolutions, “Anomaly and Commonplace”

<sup>106</sup>U Thant quoted in Suzuki, “Self-determination and World Public,” 845.

<sup>107</sup>Diamond, quoted in Reno, *Corruption in State Politics*, 10.

<sup>108</sup>Strang, “Anomaly and Commonplace” 150

<sup>109</sup>James, *Sovereign Statehood*

from projects that solidified their traditional, charismatic, or even legal<sup>110</sup> authority over defined populations, but were rather bequeathed it from above over sometimes important segments of the population which saw little rational, emotional, or traditional appeal in the new institutions of central power.

Rightfully so, Strang concludes that “the stability associated with recognition is extraordinary in a world” supposedly governed by Hobbesian logic, making sovereignty “virtually an ‘absorbing state’ which once entered is not left.”<sup>111</sup> The root of this stability in fact lies in Ashley’s discussion of the “anarchy problematique,” involving a process whereby international society is able to spread a form of governance even in the absence of government through its hegemonic control of the institutions, values, and norms that guide the interactions amongst sovereigns.<sup>112</sup> Membership criteria are decided by those recognized to hold power in the capital and over the “legitimate” (in the eyes of the international community) institutions of the state, even if these authorities are fundamentally not in control of the political community they claim sovereignty over internally.

The result has been the sanctification of states characterized by Jackson and Rosberg as internally ‘weak,’ and marked by:

“political instability (as indicated by coups, plots, internal wars, and similar forms of violence)...[where] national governments exercise only tenuous control over the people , organizations, and activities within their territorial jurisdictions....the populations are divided along ethnic lines...Some governments have periodically ceased to control substantial segments of their country’s territory and population.”<sup>113</sup>

Rather than maintaining a Weberian monopoly of force, Jackson and Rosberg convincingly argue that these “states” grounded not in their empirical reality but in their juridical status in international law, are simply “quasi-states.”

The “quasi-state” is internally weak, but does not face destruction or the loss of territory that would have driven the process of identification with a political community in early Europe or forced more creative solutions to its state-building endeavor. In the new system where external

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<sup>110</sup>These are the foundation for the legitimation of state coercive authority over society, Gerth and Mills, *From Max Weber*, 77-79.

<sup>111</sup>Strang *ibid*, 154.

<sup>112</sup>Ashley, “Untying the Sovereign State”; Jervis, “Cooperation Under Security Dilemma”; Young, “Anarchy and Social Choice”; Axelrod, *Evolution of Cooperation*

<sup>113</sup>Jackson and Rosberg, “Why Africa’s Weak States,” 1.



sovereignty is now more important than internal sovereignty in the survival of states, many are conferred statehood by the reigning powers of a state system intent on protecting its own viability, and are thus robbed the chance for internal manipulations or empirical reality to determine boundaries. It is essentially stuck with a conundrum, the legal right to govern and control a population larger than its capability to do so in a central state, either through moral legitimacy or finite coercion. In other words, many post-colonial states were born with only the theoretical apparatus of a modern state, described by Oakeshott as an “office of authority” and “an apparatus of power,”<sup>114</sup> but without the actual capability of projecting authority or enforcing their decisions throughout their domain. In fact, a similar process had already been noted by scholars like Tilly in late developing states in Europe, where “the later the state-making experience...the less likely internal processes...are to provide an adequate explanation of the formation, survival or growth of a state,” revealing just how important the growing society of states and its powers of socialization have become.<sup>115</sup>

While these internal dynamics would have previously led to the annihilation of many of these political communities, the new international norms previously discussed combined with the inability of the two global superpowers, the United States and Soviet Union, to engage in territorial aggression without risking mutual assured destruction, allowed the time and space needed for many of these states to begin a process of legitimisation, dividing or combining national communities into states. In some like Iraq, the central regime was faced with great instability and repetitive coups alongside continued contestation, but could still amass an immense amount of coercive power and some modicum of compliance from a divided society. Yet even as these states gained some level of legitimacy amongst important segments of the population, they were robbed of the ability to expand borders and un-threatened by the permanent loss of territory by new international norms and thus stagnated somewhere in between collapse and the modern nation-state’s supremacy over the “people, resources, and ultimately, over all other authorities within the territory it controlled.”<sup>116</sup> They could neither conquer their society, nor be forced through natural processes of selection to compromise with it.

The survival of these new states was unsurprisingly then subject to different constraints, opportunities, and incentives than their European predecessors, resting not upon supportive social

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<sup>114</sup>Oakeshott, “Vocabulary of Modern European”

<sup>115</sup>Tilly, *Formation of National States*, 46.

<sup>116</sup>Axtman, “State of State,” 260; Also, Anderson, “Shifting Stage of Politics”

institutions. Because their existence was not based on the defeat of rivals, the statelessness that occurs in Weber's writing when there are dual claims to sovereignty over the same population or territory was tolerated and perpetuated in a significant number of states, even while the international community recognized a single contestant as the sole legitimate source of political order. Thus even when these states did engage in warfare, the changing requirements of conventional warfare, where advance arms and machinery are acquired from developed states rather than from the organization of one's own population and resources, combined with the ongoing contestation of the state by society, to change the impact of war on the state-building process. Instead of being a state-builder, research into wars in the developing world, especially of a protracted nature, demonstrated that interstate war had in fact become detrimental, even retrograde, to the development of the state.<sup>117</sup> At least in part, this was a result of the fact that most wars were now also partially internal contests and a reflection of the inability of the new states to create either Mann's 'infrastructural power'<sup>118</sup> or Gramsci's ideological hegemony<sup>119</sup> over their own societies,<sup>120</sup> that would allow them to fight traditional wars between sovereigns in protection of "national" projects.

Following the writings of many scholars,<sup>121</sup> new state leaders' biggest challenges were thus not surprisingly internal, coming from their own societies. What Ayoob calls the "security dilemma,"<sup>122</sup> these states often struggled to define an inclusive state-building project that could translate into viable "security software" that would allow them to build the critical survival triad needed for any government: legitimacy, integration, and policy capacity. In these states, it was the coup -- rather than foreign invasion-- that most threatened their survival. Thus,<sup>123</sup> neither Lippman's traditional definition of security<sup>124</sup> based on a nation's ability to protect the practice of its core values or Wolfers'<sup>125</sup> emphasis on the ability to deter an attack, fits precisely with the type

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<sup>117</sup>Gongora, "War Making and State," argues that the Iran-Iraq War and Egypt-Syria's later wars with Israel actually diminished the infrastructural gains of the state in regards to society; Also, Barnett, *Confronting Costs of War*.

<sup>118</sup>Mann, "Autonomous Power of State"

<sup>119</sup>Gramsci, *Selections from Political Writings*

<sup>120</sup>Core of Ayubi's argument made in relation to Arab states of the Middle East, *ibid* 3.

<sup>121</sup>Azar and Moon, *National Security*; Thomas, *Search of Security*

<sup>122</sup>Ayoob, "Security Problematic"

<sup>123</sup>*ibid*. 261.

<sup>124</sup>Lippmann, *US Foreign Policy*, 51.

<sup>125</sup>Wolfers, *Discord and Collaboration*, 150.

of challenges faced by most post-colonial states, where leaders were “occupied primarily with internal threats to the security of their state structures and to the regimes themselves.”<sup>126</sup>

Trapped in their own borders, the process through which these states sought to build capacity vis-à-vis society based on an ill-suited European past engendered further instability. The result was the proliferation of states that are “tense, deeply conflicted, dangerous and contested bitterly by warring factions,” defined at the extreme by states where “government troops battle armed revolts...cannot control borders...regimes prey on their own constituents...criminal violence grows...[states] lose authority over sections of territory” and citizens turn to warlords rather than the state for protection and services.<sup>127</sup> Consequently, even when outside forces are involved in their coups, it is in accordance with Litwak and Wells’ observation as a direct consequence of the “turbulent nature of the target environment itself,” with regional and internal conflict creating the pretext for outside intervention.<sup>128</sup>

Even when these states maintain a high level of despotic power, their inability to extend infrastructural power over their entire territory through the centralized Weberian state or convince significant segments of their populations of their legitimate authority prevents them from being strong states or engendering an inclusive, stable state-building exercise.<sup>129</sup> Thus, while social movement theorists were right to point to the importance of regional and international actors in driving many sub-state conflicts, their ability to so readily find willing participants was fundamentally grounded in the illegitimate birth of many of these nations and their failure to construct national projects that could appeal to the vast majority of their population. Since many states relied on international patrons for their continued survival instead of domestic constituencies, “the incentives to develop the classic attributes of states, such as professional militaries, strong fiscal systems, and other administrative bureaucracies, were weak while inducements to maintain the appearance of stability were strong.”<sup>130</sup> The contested nature of many of these states and their subsequent inability to provide the services expected by their populations left an aching need for ever larger defence capabilities to be used against internal opposition,

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<sup>126</sup>Ayoob and Samudavanija, “Leadership and Security,” 256.

<sup>127</sup>Rotberg, *State Failure*, 5-6.

<sup>128</sup>Litwak and Wells, *Superpower competition and security*; Skocpol makes a similar argument in relation to revolutions, *ibid*.

<sup>129</sup>Mann, *States, War and Capitalism*; As Mann points out, a state can have immense amounts of despotic power, while lacking the infrastructural power to carry out its policy. These states remain weak and vulnerable in their dependence on force to maintain order and lack of domestic legitimacy or cohesion.

<sup>130</sup>Anderson, “Antiquated before They Ossify,” 9.

while the consequent application of force to squash these challengers had the counterproductive effect of fueling further resentment amongst key segments of the population toward the state and its institutions. As Kelidar describes, “in the absence of a universally accepted basis for the rule of law, coercion and a frequent resort to violence rather than accommodation have become the norm in the resolution of political disputes as well as the means for the attainment and retention of political power.”<sup>131</sup> Stuck with borders that could neither expand nor retract to reflect their success or failure, many states stagnated for decades, involved in periodic wars of attrition with important segments of their own societies or driven toward forms of government so autonomous from their societies as to be based almost solely on coercive force, a spectre inimical to Weber’s vision of the modern state.

### **Defacto and Quasi States in the New Society of States**

One of the results of this failure and the continuing contestation of national projects by often-substantial populations in these “quasi” states, was a new type of political community that arose outside of the legal recognition of the international community. With little chance of overcoming the overwhelming post-World War II international order that sanctified the boundaries of their home states, these alternative national projects were forced to stagnate outside of the typical categories of recognized political communities while constructing all the trappings usually associated with modern statehood: bureaucracies, legal systems, military and police forces, and taxation and revenue systems. Referred to by a variety of names, it is Pegg’s description of the “defacto state” that most aptly describes this category of political entity<sup>132</sup> by clearly articulating the juxtaposition of the intertwined and related nature of the rise of these political communities within Jacksonian quasi-states<sup>133</sup> in the current society of states.

The two phenomena are deeply tied to an international society of states where states are not rooted in sociological and empirical categories, but are instead bequeathed life from above.

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<sup>131</sup>Kelidar, “States without Foundations,” 315.

<sup>132</sup>Reference to these entities as “insurgent states” contains an unfortunate ideological bias for the current order. While the term “states-within-a-state” appropriately describes the phenomenon, the term “defacto state” provides the clear juxtaposition of their intertwined nature within Jacksonian quasi-states.

<sup>133</sup>Autonomous units in the developed world which have been granted a large degree of independence from their home states through negotiated settlements are not defacto states, namely because they are recognized through negotiations with their home states (not typically quasi-states) and the major governing authorities within them do not claim or seek to become sovereign entities.

While defacto states maintain internal sovereignty, they lack external sovereignty; whereas quasi-states maintain external sovereignty, but lack internal sovereignty. By the old European state logic then, defacto states fall into a category of political communities that would previously have achieved the means to be recognized as sovereign states with “long-term, effective, and popularly-supported organized political leaderships that provide governmental services to a given population in a defined territorial era.” They are capable of meeting the obligations of sovereign statehood, but are prevented from doing so by the current system of international norms that provides no room for their juridical recognition and thus forces them to remain outside the boundaries of international legitimacy.<sup>134</sup>

The most obvious and articulated defacto states are the Kurdistan Regional Government, the Republic of Somaliland, Abkhazia, South Ossetia, the Turkish Republic of Cyprus, and Kosovo. These states, most of which spawned from related ethnic movements with both real and perceived grievances against their home states, through both military success, outside patronage, and popular legitimacy, were able to establish patterns of governance familiar to the modern system of statehood, and are thus differentiated from ethnic movements and small-scale community coping mechanisms found in similar situations<sup>135</sup> by the level of their ability to govern, their replication of typical state-like governing mechanisms, and their desire to imitate the form of political community represented by modern statehood (regardless of their actual desire to secede or seek independence).<sup>136</sup> They are distinguished from warlords, bandits, and other profit-seeking groups by their primary political goals, “its capabilities (providing some sort of governmental services versus solely parasitic extraction), and its degree of popular support.”<sup>137</sup>

These political communities, while still very diverse in form and reliance on external patronage, are significant and institutionalised entities that rely at least partially on the political vacuum left in legitimate authority by Jacksonian quasi-states. While not all quasi states have defacto state challengers, defacto states can only appear in quasi-states. Thomson’s analysis of the

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<sup>134</sup>Pegg, “Defacto States,” 4: While not the first to use this term, he is the first to fully articulate the “defacto state” as a certain form of political community.

<sup>135</sup>Clapham, *Africa and International System*

<sup>136</sup>Pegg requires the seeking of “constitutional independence” in his criteria. That portion is purposefully excluded and is not shared in this analysis, missing the very real openings in most for a type of sovereignty that falls short of independence. Pegg must exclude cases like Iraqi Kurdistan which clearly fit his model otherwise. In fact, most of the states he listed would periodically be excluded. Even in the most fiercely independent-seeking, there are often significant and important elements willing to compromise. In others, it is difficult to tell how much is negotiating stratagem or appeal to foreign patrons, rather than an actual representation of the long-term goals.

<sup>137</sup>Pegg, *ibid*, 29.

different components of statehood partially captures the juxtaposition of the quasi-state and defacto state by contrasting the possession of power versus recognition, or authority versus control.<sup>138</sup> While Thomson notes that “recognition without power capabilities characterizes most contemporary states, cases of power capabilities without recognition exist as well.”<sup>139</sup> In other words, many quasi states possess recognition by the international community but lack the power to actually exercise their authority, while many defacto states possess the capabilities or power to enforce decisions but lack recognition. Another way to put this is the contradiction between authority, which represents the “right” or legitimacy to make a decision possessed by the internationally recognized sovereign, versus the control implied by the actual ability to enforce decisions executed by a defacto state.

However, in contrast to Pegg’s argument, while this categorization is useful in understanding the function of the defacto state from the perspective of the international community, it is clear that among their populations, the most advanced defacto states actually possess a great deal of “authority.” What makes these defacto entities unique in fact is not merely their ability to control territory, but their attack on the centralized sovereignty of states based upon their presumption of legitimate authority in areas they govern. They are not mere kinship or tribal hold-outs, they often have very real designs on constructing the sort of political community and institutions epitomized in Weberian statehood. They implicitly challenge then the distinction made by Thomson, whereby the sovereignty of states has always predominately rested in their authority to wield legitimate force in the territories under their jurisdiction, rather than their actual ability to do so (control).<sup>140</sup> The most sophisticated defacto states after-all, claim this same legitimacy for themselves though not always in terms of independence as Pegg assumes. This is what makes the presumption of legitimacy alongside control in defacto states so challenging to the established system of international order and political theory, and marks a transition in many of them from revolutionary, secessionist, or ethnic movements to state-like entities. And it is this combination of authority and control in fact, which helps explain the longevity of many of them, despite the often overwhelming preponderance of force and weapons capabilities bent on their destruction.

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<sup>138</sup>Pegg *ibid*

<sup>139</sup>Thomson, “State Sovereignty in International Relations,” 220.

<sup>140</sup>*Ibid* 215-217. Specifically, she argues that “sovereignty is not about state control but about state authority.”

The classification above stands in marked contrast to Pegg's definition, which requires the defacto state to seek "constitutional independence."<sup>141</sup> Based on Alan James's work, constitutional independence refers to the aspect of sovereignty<sup>142</sup> whereby an entity is "constitutionally apart, of not being contained, however loosely, within a wider constitutional scheme." Thus, working backwards on traditional notions of sovereignty, Pegg becomes trapped in the status quo ideas of a past era, whereby a state whether defacto or not must seek independence or ultimate sovereignty. A tautological presumption, there is no reason to presume this to be the end goal of a state-like entity. In fact, as the analysis of the development of the defacto state in Iraqi Kurdistan demonstrates, there are other avenues open to the defacto state which allows it to both maintain its large degree of sovereignty and gain international recognition, while remaining part of a larger sovereign entity. Beyond Pegg's reliance on Buchanan's distinction between national and local secession,<sup>143</sup> this compromise is reflected in the national rather than local sense by adopting and adapting to changing notions of sovereignty found in new federalism. In fact, even at the state level, the idea of constitutional independence is eroded by the advent of a stronger European Community. Thus, while Pegg's defacto state must be independence-seeking, this study holds that the defacto state is only required to seek the lesser goal of maintaining the attributes of a traditional sovereign needed to maintain its governing independence from the central state.

While the end goal of such a claim may very well be independence or secession, it is not required, and is contradicted by the growing empirical evidence of the evolution of defacto states. However, the defacto state does seek international and national recognition of more than just its control of territory. It also desires recognition of its authority to govern its population. Again, the development of Iraqi Kurdistan demonstrates that this does not require recognition of its independence. Likewise, the defacto state seeks recognition of its authority from the international community of states and its own homeland, but does not wish to merely take over an already existing state. Rather, it seeks a redefinition of authority structures based on its claims to

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<sup>141</sup>Pegg, *ibid*, 33.

<sup>142</sup>James, *Sovereign Statehood*

<sup>143</sup>Pegg uses Buchanan's distinction between the local secession of places like Berne Canton in Switzerland, from the national secession engendered by defacto states or ethnic movements, specifically that it seeks "sovereignty as constitutional independence, not a change in its position within an existing sovereign state," 33; Buchanan, *Secession*.

legitimately represent a subsection of an already recognized state or states. This may include an independence claim, but it need not.

In summary the defacto state is/has (as adopted from Pegg):

- 1) A territorial entity with a claim on a particular and defined population
- 2) Governmental structures with a primary political purpose that offers its population services
- 3) Control over a given area for a sustained amount of time
- 4) Local authority or popular support
- 5) No preponderance of international or national recognition of its authority, but has a desire to achieve international and national recognition

Of course, within this categorization there are important differences between them that will vary the applicability of the Iraqi solution to their own conflicts, both in terms of the way in which they emerge and maintain themselves, and in the strength of their domestic or foreign support; but by abandoning the notion that defacto states must seek independence, the door is opened to solve the dilemma presented by some defacto states without re-ordering major international borders as was the case in past epochs. This is most likely to occur through a process of new institutional frameworks that devolve significant aspects of sovereignty within states through federalism and develop new methods to tie sub-state actors into regional frameworks that resist domination by ethnic majorities. As Maier argues, “to grant every people its own sovereignty is not feasible, but they can have their representation, cultural institutions, a share of the public purse and a delegation in international overarching structures.”<sup>144</sup>

This argument follows the belief that many of these conflicts were caused by the development of centralizing, ethnocentric states in the developing world, which excluded significant minorities from the same privileges afforded to those belonging to the ruling group. Stuck in a vicious domestic security dilemma, in states like Iraq, authoritarianism and anarchy are not in opposition, but instead co-exist because “rulers are unable to impose their arbitrary authority throughout the country: anarchic conditions provoke them to treat protesters and dissidents as enemies to be suppressed or killed, not as opponents to be respected.”<sup>145</sup> In Iraq,

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<sup>144</sup>Maier, “Democracy and Discontents,” 55.

<sup>145</sup>Riggs, *Administration in Developing Countries*, 90.



repeated governments in Baghdad with differing political philosophies have thus spent immense amounts of treasure and blood attempting to bring the Kurdish regions under their domain. In the process, they have not only caused great human suffering and destruction, retarded the economic growth of their society, and left a legacy of distrust between Arabs and Kurds, but they have also destabilized and undermined their ability to control the core Arab territories of their domain. A brief look at the history of Iraq found in the next chapter reveals that while the war has been against the Kurds, the greatest effect on Baghdad has long been its resulting inability to establish its legitimacy against regime detractors closer to home.

Able to limp along for the reasons described above, the state has neither been forced to collapse and re-order along more rational lines, nor to reach a compromise resolution with its society and engage in a legitimized, inclusive state-building project. This reveals the paramount advantage of ending the contestation between defacto and quasi states. It is not only about recognizing the rights of defacto states or incorporating them as members of an international system. It is also not solely about justice or securing human rights. The resolution of these conflicts holds immense benefits for the reconstruction of more viable sovereigns in their homelands that will contribute to political order and benefit the entire population of these countries. As Weller argues, the current configuration of the international system creates a “self-determination trap,” whereby “compromise constitutional settlements that might maintain the unity of the state, while permitting a greater expression of diverse identities through the legal and political system, have...been denied.” Using the challenge to their territory and international norms regarding secession as a shield, “most central governments [therefore] feel under no pressure to accommodate demands for change.”<sup>146</sup> The result is ongoing despotism, poverty, and instability subjected over the entire population.

### **Where International Society Meets the State: State-Building, Ethnic Groups, and Defacto States**

*“Indeed, most of the evidence suggests that Kirkuk’s ethnicities lived in relative harmony before the founding of the Iraqi state.”<sup>147</sup>*

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<sup>146</sup>Weller, “Self-Determination Trap,” 4.

<sup>147</sup>Anderson and Stansfield, *Crisis in Kirkuk*, 80.

In analysing the rise and success of movements that have challenged “new” states, this dissertation argues in-line with a grounded constructivist approach that pays particular attention to institutional and structural incentives that engender conflict along certain lines and provide the opportunity for the successful mobilization of social resources in opposition to the state.<sup>148</sup> Given that the majority of defacto states are reflections of ethnic or parochial divisions in their states, rather than religious cleavages, this is the predominant focus of this inquiry although it is certainly imaginable that religion and other cleavages play an important subsidiary role in many cases and have the potential to be the primary driver in the right context. This approach is based in an appreciation for the constructed, fluid, and yet very real nature of ethnic differences, but does not ignore the important over-arching structural and institutional insights of social movement theory, instrumentalism, and structural theories that pay particular attention to the importance of incentive structures in shaping contestation. In so doing, it points to the importance of a re-structuring of the state-level institutional environment in which these conflicts take place, with a corresponding shift in the normative and structural environment at the international level.

The continued presence of ethnic or sectarian movements that express a desire for representation of their non-state nations is in fact an enduring and important challenge for the society of states. For too long, mainstream international relations theory largely ignored the continued sway of ethnic and sectarian movements under the belief that modernization would inevitably create assimilationist tendencies as people became increasingly mobile and tied through economic and political interactions to larger societies.<sup>149</sup> Most modernization theorists argued that ethnic challenges would eventually disappear as traditional societies industrialized, moved through the stages of modernity, and developed new forms of modern social identity or civic nationalism.<sup>150</sup> This was all seen as a natural outcome of the developmental state-building process in new states, which would replicate the process of European state-making whereby increasingly efficient and centralized Weberian states provided a range of services in terms of representation and protection for their communities.

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<sup>148</sup>Three factors in the literature seem to be particularly relevant for determining the success and overall character of social movements: political opportunities, resource mobilization, and framing: McAdam, McCarthy, and Zald, *Comparative Perspectives on Social Movements*

<sup>149</sup>Deutsch and Folz, *Nation-Building*; Finkle and Gable, *Political Development and Social*; Jacob and Toscano, *Integration of Political Communities*

<sup>150</sup>Carr, *Nationalism and After*

However, as scholars like Connor noted and the above discussion of the creation and structure of the new society of states attests, these processes were in fact just as likely to make populations more aware of their difference from others within their states. Just as inter-ethnic communication would be enhanced, so would intra-ethnic communication and the likelihood in the age of self-determination and nationalism that these differences might become more politicised and important rather than less.<sup>151</sup> In fact, the enduring nature of ethnic movements and their re-emergence throughout the Western world led to a profound re-thinking of the modernization thesis. Led initially by primordialists arguing that the lingering nature of nationalist challenges to status quo states stem directly from a system whereby there are only around 200 recognized governing bodies existing amongst communities that speak over 8000 languages,<sup>152</sup> some scholars relied heavily in their critique of modernization theory on the fact that large swathes of the globe have had artificial states implanted over cultural, religious, and racial differences that often coagulate along ethnic lines to produce conflict.<sup>153</sup>

This line of thinking was myopic however, fatally undermined by the fact that not all ethnic groups became politicised and contested the state, and weakened by the fact that primordial theory could not explain the intra-ethnic fighting that occurred in many developing states between different religious groups, tribes, or other sects. Leaving out an institutional or instrumental analysis, it succeeded in challenging the equally limited modernization thesis that saw ethnicity as an ephemeral and passing phase in human social evolution, without explaining why it was sometimes (but not always) a source of conflict. Modern case studies of nations such as Turkey and Sri Lanka, which had in fact seen rising violence between ethnic groups that had historically co-existed peacefully in more de-centralized pre-modern regimes begged for a deeper, institutional explanation for the change in their group dynamics. Although in these cases, the respective groups had fought wars in the past and recognized their ethnic differences for centuries, giving weight to primordialist explanations for the existence of distinct “natural” identities, during long historical periods the groups had also cooperated successfully in different institutional frameworks. In addition, the boundaries between groups in many of these cases had historically been relatively fluid, only gaining rigidity with the onset of the modern nation-state.

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<sup>151</sup>Connor, “Nation-building or Nation-destroying”

<sup>152</sup>Knight, “Identity and Territory,” argues that territorially-defined ethnic groups will always aspire independence when an opportunity arises.

<sup>153</sup>Armstrong, *Nations before nationalism*; Geertz, *Interpretation of Cultures*

The identification of Sri Lankan Sinhalese and Tamil, for example, was a relatively modern phenomena,<sup>154</sup> as was the Turkish state's definition of Turkishness.<sup>155</sup> This begged the question then as to what was unique about the modern state system that was contributing to the violence between respective ethnic groups in many developing countries.

The field of ethnic theory was significantly progressed then by the introduction of more critical theories based in constructivist, institutional and instrumentalist arguments. These theories focused more on an understanding of the specific context in which group consciousness could arise and lead to coordinated movements for group's rights, and consequently shifted the focus in ethnic theory from the unending need to destroy states to grant sub-state groups their own representation to a more productive study of the institutions and structures that could both encourage or ameliorate group demands in specific contexts.

While scholarship still tended to under-emphasize or "wish away" the ethnic factor in many developing states,<sup>156</sup> leading scholars like Anthony Smith, noted that while ethnicity can be just one manifestation of group identity cleavages (that could be rooted in history, language, religion, or other patterns of social differentiation) ethnic groups held tremendous sway over the loyalties of people because they were deeply rooted in shared myths of descent, history, and culture and typically tied to a certain homeland or defined territory.<sup>157</sup> While open to manipulation and the institutional structure around them, Horowitz and others drew out how enduring and powerful these notions could be in driving human action.<sup>158</sup>

Thus, while instrumentalists critically highlighted the importance of ethnic entrepreneurs in capitalizing on ethnic differences to drive many ethnic movements in pursuit of their own interests,<sup>159</sup> these were not mere transitory or idly constructed identities that could be re-figured by elites at will. They could also not successfully be constructed without due cultural basis.<sup>160</sup>

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<sup>154</sup> Ponnambalam, *Sri Lanka*

<sup>155</sup> The definition of Turk adopted by the state was based on Gokalp's theory that Turkishness was represented by a cultural way of life, rather than race or ethnicity. This challenged the use which had historically only applied to peasants in the Anatolian region, and was often used during Ottoman times as a derogatory slur. This theory constructed a single ethnic group of the disparate tribes of the region that spoke different dialects and hailed from different ethnic origins (Saatci, "Nation-states and Ethnic Boundaries"): Also, Gokalp, *Principles of Turkism*

<sup>156</sup> Rivkin, *Nation-building in Africa*; Beling and Totten, *Developing Nations*

<sup>157</sup> Smith, *Ethnic Origins*

<sup>158</sup> Horowitz most famously stated in his critique of instrumentalism, that "the ethnic group is not just a trade union," *Ethnic Groups*, 104.

<sup>159</sup> Brass, *Ethnicity and Nationalism*; Gurr and Harff, *Ethnic Conflict*; Esman, *Ethnic Politics*

<sup>160</sup> Young, *Politics of Cultural Pluralism*; Esman *ibid*.

Instead they were abiding differences that could be politicised when the institutional context made them a salient and important basis for mobilization, and they could in fact come to eclipse all other identity markers.<sup>161</sup> Not surprisingly then, following the logic of the work of early proponents of innate nationalism found in the writings of Herder, Fichte, and Weber's *stande*,<sup>162</sup> territorially-bound ethnic minorities most often led to the rise of the sort of sustained counter-state social movements that could establish the necessary scale for the creation of rival state projects by mirroring the nationalist under-girding that led to the initial construction of modern states in Europe.<sup>163</sup>

Ethnographers such as Benedict Anderson and Ernest Gellner convincingly argued then that while the boundaries of ethnic groups evolve over time and require the mutual recognition of members of the community to a shared identity,<sup>164</sup> ethnic movements were in fact deeply embedded in the political and social milieu around them, creating and re-creating themselves in order to fit particular contexts. Rather than a single traditional form of identification, constructivists argued that many of the social movements that relied on ethnic nationalism were actually manifestations of a process wherein particular identification markers were adopted and adapted over time to suit the conditions and needs of particular groupings of people. For Gellner, this form of political nationalism was the result of a certain form of social organization found in modernity, whereby agrarian societies made a transition into large industrialized communities where personal interaction was no longer a suitable means of binding the community together and was replaced by culture.<sup>165</sup> In both cases, studies of post-colonial states in Africa and even the earliest states in Europe demonstrated how essential the state and its services were in creating both the nation, and counter-nations.<sup>166</sup>

It was not merely that a transition was taking place in these societies, but rather that it was taking place in a certain way under a particular form of political community. The quest for a centralized, unitary Weberian state politicised many ethnic identities and brought groups into

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<sup>161</sup> Esman *ibid*, 15.

<sup>162</sup> Herder, *Outlines*; Gottlieb, *Addresses*

<sup>163</sup> For the Kurdish case, Bruinessen, *Agha, Shaikh*; Gunter, "Modern Origins," 2-7; Hassanpour, "Making of Kurdish"

<sup>164</sup> Anderson, *Imagined communities*; Gellner, *Nations and nationalism*

<sup>165</sup> Anderson *ibid*

<sup>166</sup> Hobsbawm, *Nations and Nationalism*; Weber, *Peasants into Frenchmen*; Walker, *Ethnonationalism* and "When is a nation?"; Young, "Ethnicity and Colonial"; Deutsch, *Nationalism and Social Communication*

conflict throughout the developing world.<sup>167</sup> Empirical evidence suggests that in most cases of ethnic conflict, antagonists had previously co-existed in at least periodic peace before the introduction of new forms of political community came from the West. Prominent cases have ranged from the Kurds in Turkey to the Sinhalese and Tamil in Sri Lanka and the Hutus and Tutsis in Africa. As just a few representative cases of a much larger and documented phenomena, it is clear that the introduction of centralized ruling institutions through the establishment of a form of political community that differed greatly from de-centralized empires played a fundamental role in politicising some ethnies in opposition to one another. The increasing encroachment of the state into the daily lives of its citizens, inevitably heightened the political importance of identity representation making it evident that the institutional relationship between the two groups matters as much to their cooperation/conflict as any primordial tendencies, and that certain contexts could exacerbate or ameliorate differences between ethnic groups.

Horowitz touches on this fact in his analysis, noting that the rise of ethnic challenges are intimately tied to the state-making experience itself in the developing world, with the over-centralization and over-extension of the state in the post-colonial era exacerbating ethnic cleavages and creating resistance among local elites.<sup>168</sup> This process is abetted by the drive for Weberian centralization, and the Hegelian idea adopted from the early European experience that strong states are in fact unitary and homogenous. The phenomena whereby modernization efforts by the Weberian state cause social structural changes that increase the salience of ethnic politics has duly been argued by a broad range of scholars.<sup>169</sup> This has occurred both through the growing realization of inequality between core and peripheral ethnic groups<sup>170</sup> and the intensification of inter-group exchanges between formerly segregated groups that naturally occurs with the centralization of state institutions in urban centres.<sup>171</sup>

The importance of this particular type of state-building to the rise of ethnic movements is witnessed in the need to increasingly classify, homogenize, and standardize cultural exchanges, with the result being the definition of rigid ethnic groups in previously amorphous communities. Many new modern states worked to create a common ethnic identity by re-classifying tribes and religious sects into a dominant ethnie, and either subverting or limiting the right of other non-

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<sup>167</sup> Rothschild, *EthnoPolitics* ; Stack, *Ethnic Identities*

<sup>168</sup> Horowitz, *Ethnic Groups*

<sup>169</sup> Calhoun, *Nationalism*; Smith, *Ethnic Origins*

<sup>170</sup> Clark, "International Competition"

<sup>171</sup> Belanger and Pinard, "Ethnic movements and Competition"; Nagel, "Constructing Ethnicity"

dominant groups' access to the state.<sup>172</sup> This brought not only problematic and invasive new forms of bureaucratic centralization that heightened attention to linguistic, religious, and cultural differences, but also placed increased importance on the existence of these differences. In the new system, acquiring state status meant access to the international system, vast resources, legitimacy, and prestige. In most cases, minorities could no longer achieve autonomy from the centre as they had done in vast multi-cultural empires based upon their unique traditions, because all sovereignty and authority was vest in central Weberian state institutions run in the interests of a particular group of state elites. This fundamentally re-ordered relations between peripheral groups like the Kurds and the new nations they found themselves suddenly apart.

In the context of the aforementioned security dilemma of many states, the adoption of Weberian and Hegelian norms was a potent, but often lethal elixir then for relations between different ethnies. While other theories helped explain why ethnicity in particular had become important during the formation of modern states, it was the institutionalist approach which most aptly described why this new identity formation often led to such violent conflict between groups. For those left out of the national process and forced to live in minority status, local methods of social control became a target for destruction in the effort to build "modern" states. As the previous analysis of state consolidation illustrated, the Western-imposed idea of a Hegelian modern state viewed these local methods as the enemy of modernity.

In fact, scholars still measure the success of state consolidation in the developing world in terms of its hegemony over forces that were the bedrock of social organization, control, and identification in minority regions during the age of empires.<sup>173</sup> The best-case scenario in many states was tragically what Smootha called "ethnic democracy," democracies based on the "contradictory combination of democracy for all with ethnic ascendancy."<sup>174</sup> These ethnic democracies instituted a system in which access to the new states' vast resources were mediated solely through the majority language, denying equal access to the minority groups and threatening the previously harmonious ethnic balances. In cases like Sri Lanka, the issue of linguistic nationalism would come to play a defining role in pitting the Sinhalese and Tamil against one

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<sup>172</sup> Analysis of the symbiotic nature of the modern nation-state and the national community: Mann, *Sources of Social Power: The rise of classes and nation-state, 1760-1914* (Cambridge UP; 1993); Tilly, "States and nationalism"; Breuilly, *Nationalism and State*; These have been ritically compared with the experience of most developing state-society relations, Migdal, *Strong Societies and Weak States*

<sup>173</sup> The proliferation of Migdal's work and methodology demonstrates the significance to modern theory.

<sup>174</sup> Smootha, "Types of Democracy," 423.

another, leading ultimately to institutional decay and the isolation of the Tamil from the national government.<sup>175</sup>

Even under these best-case types of arrangements, a far cry from sectarian despotism found in totalitarian Iraq, the hallmarks for ethnic conflict identified by scholars were created and perpetuated: perceived affronts to a community's honour or dignity, tangible threats to the vital interests of a community, and fresh opportunities to gain advantages or redress grievances.<sup>176</sup> In the context of the drive for a Hegelian version of the modern Weberian state then, ethnicity through language became the dominant instrument through which groups interacted with one another and opened the gateway for ethnic entrepreneurs. All states were not equally prone to such conflict based solely on the presence of ethnic diversity. Instead the mere presence of ethnic diversity and previous ethnic conflict was a low indicator of the potential for state violence and separatism, whereby states like Malaysia were able to avoid such pre-indicators, while other less likely states fell into extreme violence based upon state-building practices at odds with the inclusive opportunities of the past.<sup>177</sup>

In most violent form, these conflicts should not have been unexpected, for they were after all based on a transformation that had originally begun in Europe and while bloody and brutal did ultimately stumble largely in the direction of stable, modern states (even if the cost was often genocide). What was different though was the institutional and structural context in which these states sought to replicate the path. As previously discussed, the spread of rigid state boundaries around the globe was not so much an empirical reality, as a matter of socialization. Many of these states were ill-equipped to follow the European path being based on colonial boundaries that made little sense in pursuit of hard-rimmed cores, yet the concept of the Weberian state became increasingly important not only as a theoretical tool, but also an ideal type to which "quasi-states" aspired. Even if they were not capable of living up to the standard, the new states were not immune to this inherited ideological baggage. As Krasner aptly summarizes:

"Choices made by leading states at a particular point in time influence not only their future range of options, but also the options of later developing states. The functions that are viewed as proper and legitimate for the state are influenced by general norms and practices. In the modern system the institutional characteristics of states in more

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<sup>175</sup> DeVotta. *Blowback*

<sup>176</sup> Esman, *Introduction to Ethnic Conflict*, 71-4.

<sup>177</sup> Bowen, "Myth of Global Ethnic," 3-14; Horowitz, *Ethnic Groups in Conflict*, 291-364.



industrially developed areas have set an agenda for states in less developed areas. These characteristics come to be associated with the essential nature of the “modern” state and cannot be ignored even by states with very different needs.”<sup>178</sup>

While never fully realized even in the West then, Weber’s “compulsory jurisdiction” became the epitome of a strong state, with a centralized administrative core capable of protecting the political community from challenges to its independence. So even while the actual process of state-building in Europe contained a variety of paths toward modern statehood in its lexicon, the model through which the most successful and earliest of Western states achieved Weberian status became the dominant source of inspiration to which the leaders of new countries looked, regardless of how problematic its application was to their particular societies.<sup>179</sup> While this socialization did not prevent deviation, it did effectively “define appropriate behaviour”<sup>180</sup> for the new members.

In so doing, the drive of the Weberian state rested in part on its status as what Ruggie dubbed the “hegemonic form of state-society relations”<sup>181</sup> and Ashley called a “hegemonic exemplar of a normalized sovereignty”<sup>182</sup> of its day. A naturally appealing concept in a region of the world new to nationalism and still shaking off the colonial chains of the early 20<sup>th</sup> century, the new states of the post-colonial world order were quickly and summarily adopted into what Keohane describes as the “complexes of rules and norms” that make up the “institution” of international relations and the modern state system,<sup>183</sup> and were subjected to a logic that recognized them as the sole source of social and political order, even when adoption of this philosophy created the basis for conflict and chaos amongst their citizens.

The incongruous model, which through its external sovereignty legitimised the domination and unrivalled control of states over populations that did not necessarily see them as legitimate, consequently laid the framework for ongoing contestation between many states and large segments of their societies. In places where new states were found such as Africa, the Weberian

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<sup>178</sup>Krasner, “Review,” 241; Support of the “branching” nature of political institutions: Verba, “Sequences and Development”; Lipset and Rokkan, “Cleavage Structures, Party Systems”; In economics: Sabel, *Work and Politics*; Braudel, *Civilization and Capitalism*

<sup>179</sup> A possible exception has been the East Asian states, which have used the late-developing Listian model.

<sup>180</sup>Rawls, “Two Concepts of Rules”

<sup>181</sup>Ruggie, “Continuity and Transformation,” 280-281.

<sup>182</sup>Thomson, “State Sovereignty,” 228, Ashley, “Effecting Global Purpose,” 45.

<sup>183</sup>Keohane, “International Institutions: Two Approaches” 390.

logic that drove the forcible inclusion of hinterlands into central institutions held no local logic and was fiercely resisted. The territorial model developed in Europe out of revolution in the value of land, made little sense where people were more valuable and thus little gain could be made from efforts to create territorially cogent political units from often-vast hinterlands.<sup>184</sup> Even in these cases though, the lines were drawn from initiation – no boundary changes,<sup>185</sup> unitary success or failure, despite any subsets’ desire to the contrary.

This potent mix created a highly problematic mentality throughout the developing world summed up by the speech of the 1963 Kenyan delegation to the Organization of African States on the matter of ethnic Somali secession, “if they do not want to live with us in Kenya, they are perfectly free to leave us and our territory...this is the only way they can legally exercise their right of self-determination.”<sup>186</sup> Of course, this sort of logic was particularly complicated in the case of those ethnies left out of the state formation process, who were left bereft of any state of their own. While the superpower rivalry virtually assured these groups a constantly available friend to aid their struggles for a homeland of their own and the weakness of their states encouraged a belief in eventual success, the entire structure of international norms and society prevented the realization of their ultimate goal to re-define state boundaries. As Rupert Emerson so aptly phrased, “the nation has in fact become the body that legitimates the state,”<sup>187</sup> leaving no room for those nations who felt they were not represented by their states’ institutions once the formative era of state-building ended and providing attractive incentives to would-be state-makers to deny, reject, divide, or annihilate alternative projects to the state.

Pitted against their societies in an effort to live up to a model no longer based in their time and place, many developing states thus became beholden to a seemingly ceaseless struggle with elements of their societies, unsurprisingly using the same coercive methods of the original Weberian creators, steeped in extraordinary violence where “early years [are] marked by despotism that was often as vicious as it was enlightened.”<sup>188</sup> The ahistorical form of this model

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<sup>184</sup>Herbst, *States and Power*

<sup>185</sup>There have been only a few cases of international boundary changes since World War II, most of which occurred during the still formative period of the decolonisation period in very small city-states: Anguilla, Singapore, Mayotte. Others during the breakup of multi-ethnic communist states: Slovenia, Croatia or a revision to colonial boundaries Eritrea and East Timor. Bangladesh is the notable exception, which successfully seceded from Pakistan thanks to military intervention by India. All of these cases represent exceptions to the rule.

<sup>186</sup>Mazrui, *Towards a Pax Africana*, 212.

<sup>187</sup>Emerson, *From Empire to Nation*, 96.

<sup>188</sup>Tilly, “War Making and State Making”

in an era of democratic and participatory norms, inalienable state boundaries, developed sub-nationalism awareness and the right of self-determination, made it a failure before it had even begun.<sup>189</sup> Weak states fought segments of their population in pursuit of strength, but could not either through the pressure or reluctance of the international community or benefactors forcibly assimilate entire segments of their population (ie. achieve “victory”) or accept defeat without relinquishing the idea of a strong, centralized, and unitary state. The state system duly transitioned from one where most wars were fought between states, to one where most conflict was with-in or across them, with very few ending in victory for any side.<sup>190</sup>

This was particularly attenuated in cases of authoritarian rule, the predominant type of regime in much of the developing world. A circumscribed range of options for counter-state movements in light of the authoritarian nature of many of their states left little opportunity for grievances to be accommodated through political institutions. Rather, excluded from the power centres of their states, the political opportunities for mobilization of their grievances inevitably tilted toward armed conflict.<sup>191</sup> Through this process, the “over-development” of some states and the incredible growth in administrative and coercive capacities in post-World War II developing states along a particular path that excluded many from the state project, created the extreme forms of resistance found amongst their population to these very same institutions.<sup>192</sup> Even in cases where the state appeared to have gained tremendous coercive capacity (and in fact often because of it), ethnic resistance successfully continued to the state-building project, revealing that the “power” of the new states was not grounded in the sort of political-social cohesiveness found in early modern Europe.<sup>193</sup>

Thus, while the cost differential of violent action was often high and prohibitive to ethnic movements, it was also often the only available means to protest their economic and political isolation from the central state,<sup>194</sup> and the capital for such movements building upon already existing social cleavages drove many secessionist movements. In fact, given the weakness of

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<sup>189</sup>Rose, “A Diverging Europe,” 95: argues that the development of norms of participation in the European context happened gradually and stemmed from historical political processes whereby citizens sought the vote from despotic states in order to gain freedom, rather than representation.

<sup>190</sup>Wallenstein and Sollenberg, “Armed Conflicts”

<sup>191</sup>This argument comes from social movement literature: Tarrow, *Power*; Tilly, *Mobilization to Revolution*

<sup>192</sup> Ayubi, *Over-stating*; Alavi, “State in Post-Colonial”

<sup>193</sup> Ayubi *ibid*

<sup>194</sup>Tsutsui, “Global Civil Society,” provides empirical evidence that most “modernized” states are likely to encounter peaceful ethnic mobilization, while those that have less developed institutions for the accommodation of ethnic grievances are more likely to experience violent ethnic mobilization.

many of the states, war was not that prohibitive. Fluctuating perceptions undoubtedly shifted ethnic mobilization in favour of action when the state was faced with other setbacks. Not only did this happen in the case of communist revolutions,<sup>195</sup> but can also be witnessed in the timing of uprisings that led to defacto statehood in East Timor, Kurdistan, and Somaliland following major military setbacks in their home states. These military setbacks coupled with the economic weakness of most quasi-states, limited the room for the suppression or appeasement of conflicts.<sup>196</sup>

This explanation has been particularly telling in the failure of regionalization attempts in Sudan<sup>197</sup> and has been more often the case in the defacto struggle than the more popular explanation for rebellion found in J-curve theories.<sup>198</sup> When already faced with violent attempts at assimilation, absence from the political and economic benefits of state institutions, and weak states that provided little in the way of services, the opportunity to mobilize the discontented against the status quo was certainly greater than in societies with open political systems, civil rights regimes, and strong infrastructural power.<sup>199</sup> The calculation further tips in favour of violent ethnic mobilization statistically when the group has separatist tendencies stemming from a previous experience with autonomous government and territorial congruency,<sup>200</sup> as has most often been the case with defacto states like East Timor, Somaliland, Kurdistan, Chechnya, and Eritrea.

These state level processes were deeply impacted by the nature of the international system, which both denied their chance for independence and conversely provided many with additional room for manoeuvre and external patronage. The Cold War and post-Cold War era have been critically important to the ability of many movements to persist against the coercive power of the state, exacerbating already simmering ethnic tensions. Afterall, while divorced from the time and place of early modern European states, the new post-World War II states were still

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<sup>195</sup>Skocpol, *States and Social Revolutions*

<sup>196</sup>Heisler and Peters, "Scarcity and Management," demonstrates how scarcity "exacerbates tensions between groups by adding or aggravating questions of the control and distribution of resources to existing conflicts ( 327)." This indicates ethnic or other conflicts between sub-state groups and the state are most easily dealt with at time of increasing affluence by the state, which enables to shifts in jurisdictions, redistribution of resources, and changes in resource allocation procedures more palatable and achievable to the state or majority. Also Wildavsky, *Budgeting*, 220-249.

<sup>197</sup>For a case study of Sudan, Bechtold, *Politics in Sudan*; Lees and Brooks, *Economic and Political Development*

<sup>198</sup>Bremmer, *J Curve*

<sup>199</sup>This would comply partially with questions of rationality in early work of resource mobilization, Olson, *Logic of Collective Action*; Lichbach, *Rebel's Dilemma*; Chong, *Collective Action*

<sup>200</sup>Brown and Boswell, "Ethnic conflict and political violence"

subject to Tilly's logic that, "strong forms of nationalism wax and wane with the manifest value and feasibility of ruling your own state, which depends on two factors," one at the state level (the ability of the state to circumscribe resources) and the other fundamentally at the international level: the willingness of other state's to support its objectives.<sup>201</sup>

In this context, the continued readiness of regional and international actors to aid secessionist movements has helped maintain nationalist movements and the aspiration to control resources, such as vast oil wealth, give a strong impetus for ethnic minorities to continue to seek independence. With a changing normative base that derided efforts to directly restructure boundaries between states through open warfare and a Cold War imposition of mutual-assured destruction, the support of ethnic insurgencies in rival states became a tool for super-power and regional confrontations. The Post-World War II system thus provided ideological and institutional structures conducive to building on already existing ethnic and religious cleavages to create a system prone to ethnic conflict, especially when coupled with the rise of non-governmental organizations and an international civil society committed to furthering implementation of human rights regime to provide political opportunities for ethnic mobilization.<sup>202</sup> These groups crafted avenues through which incipient movements could air grievances, garner support from trans-national groups, and legitimate their concerns among fellow minority ethnics.<sup>203</sup>

As with the Weberian sociological principles that became self-reinforcing at the state level, non-governmental group actions that take place below and above the level of the state in pursuit of human rights, either for individual or groups, provide a legitimising sociological structure and consequently social capital for many ethnic movements.<sup>204</sup> They also provide the political opportunity for incipient states to avoid military annihilation even if they do not support their secessionist claims.<sup>205</sup> This most clearly demonstrates the incongruent and often conflicting nature of international norms that at the government level prevent the recognition of new states, but at the civil level support the legitimacy of challenges to the existing status quo of many

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<sup>201</sup>Tilly, 'State-making,' 189.

<sup>202</sup>Tsutsui, "Global Civil Society" 63-87

<sup>203</sup>Donnelly, *International Human Rights*; Lauren, *Evolution*; Mullerson, *Human Rights Diplomacy*; Weiss and Gordenker, *NGOs, UN, and Global Governance*; Wiseberg, "Human rights nongovernmental organizations"

<sup>204</sup>Boli and Thomas, "World culture," 171-190. Some also received support from diaspora: Keck and Sikkink, *Activists Beyond Borders*; Loveman, "High-risk collective action"; Smith, Chatfield, and Pagnucco, *Transnational Social Movements*

<sup>205</sup>Tsutsui *ibid.*

member states.<sup>206</sup> Already faced with infrastructurally weak states, pressure by international human rights groups on developed governments has occasionally been able to inflict costly sanctions or aid injunctions.<sup>207</sup> While not all governments have responded positively to these sanctions, it undeniably affects an already weak states' ability to suppress rebellions and provides legitimisation for the actions taken by the ethnic movement as being normatively justifiable. It also at least partially circumscribes the actions that any given regime can take to suppress rebellions without facing new challenges to its rule and possible interference from regional or international foes. The current nature of the system of states and the preponderance of weak, authoritarian states then provide this room for manoeuvre and is intimately associated with the rise of defacto states.<sup>208</sup>

The institutions of the Weberian state, laying the groundwork for new forms of ethnic contestation have thus occurred within an international and local context that often incentivized groups to "instrumentalize" their identities in order to further their own political interests and resist the destruction of their authority by new state institutions. While as part of the larger trend toward rational choice theories and the continual encroachment of economic theory on political science, instrumentalists argued that many ethnic social movements and in particular, their leadership, show a consistent and demonstrable ability to reconfigure group aspirations based upon their own desire to maximize gain,<sup>209</sup> it is the internal weakness of their own states that most renders these states vulnerable to such movements.<sup>210</sup> Certainly, this has been the case in most recent history, with contradictory forces at the international level providing further impetus for bloody stalemate between the state and its detractors.

In summary, both structure and environment (beyond mere ethnic difference) aid conflict between different ethnic groups. The adoption of highly centralized, unitary state institutions

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<sup>206</sup>Scholarship about the increasing flow of information/goods across borders and relative decrease in cost of such transport, Natali, "Transnational networks"; Gunter, *Kurdish predicament in Iraq*, 133; Richmond, "Ethnic nationalism and postindustrialism"

<sup>207</sup>Mullerson ibid

<sup>208</sup>The implication is that a change in the strength of states, the character of those states, or the international system could present a different array of political opportunities for social movements that renders the defacto state extinct or encourages their spread. For the importance of changing political opportunities on social movements: McAdam, McCarthy, and Zald, *Comparative Perspectives*; Anheier, Neidhardt, Vortkamp, "Movement cycles"; Benford and Valadez, "From blood on grapes"; Evans, "Multi-organizational fields and social movement"; Flam, "Anxiety and successful oppositional"

<sup>209</sup>Posen, "Nationalism, mass army"

<sup>210</sup>Huntington, *Clash of Civilizations*

which failed to develop mechanisms for representation of the diversity of the vast majority of societies, were rigid and inflexible, and un-open to compromise, drove many ethnic groups toward violence and secession. Constructivist approaches to identity conflicts, also informed by structural and institutional approaches to state-society relations, are thus critical to understanding the symbiotic nature of ethno-nationalist movements continued growth in strength despite the imposition of ethnically foreign states and forced assimilation drives. The core point is that grievances are mobilized along ethnic lines with varying degrees of success because of the particular form and imposition of the centralized, Hegelian, unitary state on previously disparate ethnic groupings within an international context that prevented the sort of mass genocide or fluctuation of borders that characterized European predecessors.<sup>211</sup> The continued maintenance of such challenges has prevented the realization of Brownlie's "stable political community" by offering an alternative source of loyalty for a state's population,<sup>212</sup> a loyalty often propagated on the use of legitimate force by non-state actors in the eyes of a significant portion of the population. Ethnic movements and defacto states consequently represent an enduring legacy of defeat at creating viable political communities along the Weberian model in much of the world.

While some scholars have been encouraged to argue for re-opening the issue of rightful secession, arguing that that "question of self-determination should not be divorced from the issues of human rights and the welfare of minorities" when "intense communal cleavages and violence... left a legacy of fear and mistrust that would rule out mutual co-operation except by the use of force,"<sup>213</sup> the majority of international relations scholarship continues to recognize the inherent danger in such a move and has turned instead to the justification for international interventions to protect basic human rights at the individual rather than group level. Known most widely as the "right to protect" movement, the failures and cost of these interventions at protecting vulnerable minority groups has led many to return to the idea of the reconstruction of the state as being critical to the realization of individual rights. It has become evident that while groups remain stratified by ethnic markers in states devoid of developed civic values, group rights may in fact be nearly synonymous or at least required for the protection of individual rights. The fact that ethnic movements continue and seem to be strengthening in the new millennium has led important scholars to note that it is time to re-consider the institutional arrangements that have led

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<sup>211</sup>Too often overlooked, see Natali *ibid*; Romano *ibid* for examples.

<sup>212</sup> Brownlie, *ibid*.

<sup>213</sup> Kamanu, "Secession and Right," 362.

to such ongoing contestation, “[I]t is time for confederalism, cantonization and overlapping citizenship claims to receive more creative attention.”<sup>214</sup>

With this in mind, an understanding of the way in which ethnic group identities have contested the state-building project and its ideological hegemony is critical to understanding how quasi-states can begin to address these challenges in a manner more in-line with the normative values, institutions, and consequent restrictions of the modern era. This focus is intended to move states in the developing world from “fierce” to strong states,<sup>215</sup> capable of projecting authority throughout their realm and able to rely on social and cultural capital, rather than merely coercive force, to extract compliance from their societies.

### **Re-solving Ethnic Conflicts through State Institutions**

With the increasing bankruptcy of the Hegelian-Weberian centralized state model in many developing countries, theorists looking to solve decades of conflict between rivals within many states began to look for an alternative model for the construction of viable state institutions. Although neglected, there was a wealthy tradition of political institutions dating back to the Greek era of political communities establishing bonds that sought to tie communities together without destroying their individual ability to act in a sovereign capacity. Before the heightened competition in the European system that drove the first modern states to consolidate power in centralized ruling mechanisms, there was also a tradition of thought that saw sovereignty as divided into different spheres that could be allocated among different levels of government, with security and economic concerns binding the respective units together.

These early experiments with fragmenting sovereignty were largely undermined by the philosophical move toward centralized states and the response by the European community to the destructive chaos of the late feudal era, coupled with the perceptions of both weakness and instability tied to their practice.<sup>216</sup> Much of this stemmed from their largely consensual nature, whereby the central institutions binding the communities together held so little sovereign ability to act in times of crisis that they were susceptible to constant instability, weakness, and attack. In modern terms, these first agreements were not more than loose confederations.

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<sup>214</sup> Maier, “Democracy and its Discontents.” 54.

<sup>215</sup> Ayubi *ibid* makes this distinction between, 3.

<sup>216</sup> For example, Machiavelli's *The Prince*.



This was in fact the primary challenge to modern theories of divided sovereignty, how to devolve enough power from the central institutions of the state to allow for the expression of sub-state identities without fatally undermining the ability of the state to act on behalf of the entire political community. The primary concern of early European theorists exploring divided sovereignty, known now as either confederal or federal arrangements, was the threat to liberty and enlightenment values that could result from the “excessive concentration of power in the polity.”<sup>217</sup> Not surprising then, it was the American experience that would lead the way in re-opening federal theory as the colonial leaders sought to avoid the despotic tendencies of their centralized colonial birthright and lay the foundation for the willing participation of all colonies in a project that would both unite them and respect their uniqueness. In their first attempt, they replicated the confederal methods of the past, hoping to maximize the amount of power retained by the states. When that was quickly subjected to the sort of strains found in the earliest examples of divided sovereignty in Europe, the model was abandoned in favor of a federalist form whose success would re-invigorate the model of divided sovereignty.

The American revival of federalism would be just one manifestation of a larger effort to create agreements of divided sovereignty that would address the security and economic needs of different communities, while still leaving significant room for the expression of difference amongst constituents. These first federal systems, referred to as classic federations, most often sat atop an already recognized people that shared similar linguistic, religious, and cultural habits, and were excessively focused on protecting individual rights and preventing tyranny. Their paramount concern was to prevent Montesquieu’s three functions of government residing in a singular body, instead dividing these functions to balance the impetus for tyrannical abuse.<sup>218</sup> However, they also recognized implicitly in their concern for singularity a tension between being a society of individuals or following Aquinas’s claim that society was naturally composed of a multiplicity of groups of familial, social, economic, religious, and political characters, with each having its own function and jurisdiction, brought together in a “unity of order” which allowed each the space necessary to both function independently and interact, and thus becoming a society of societies.<sup>219</sup> Their division into separate units and jurisdictions would maintain this tension, but also prevent the collapse of the democratic way of life Montesquieu feared by limiting the prospect of tyranny

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<sup>217</sup>Ward and Ward, “Introduction to Volume,”5.

<sup>218</sup>Ward and Fott, “Montesquieu on Federalism,”112-113.

<sup>219</sup>Aroney, “Before Federalism?” 39.

through administrative barriers.<sup>220</sup>

The distinguishing characteristic of these federal governments was the existence of at least two functionally independent levels of government,<sup>221</sup> represented by their enjoyment of “constitutionally separate competencies, although they may have concurrent or shared powers.” Both government levels are co-sovereigns under this system. They “can deal directly with citizens,” and cannot have their authority, territory, or power unilaterally altered by the other.<sup>222</sup> In other words, they must have a position that is constitutionally entrenched vis-à-vis the federal government.<sup>223</sup> While distinct, they also exercise intergovernmental cooperation on some issues, both sharing and submitting in governance.<sup>224</sup> They are importantly grounded in their foundation in an agreement between the respective parties that sets out respective commitments and the grounds for which changes can be made,<sup>225</sup> to ensure against transgression from either party that might threaten the independence of character of either level.

However, contemporary states faced with violent conflict or secessionist movements stemming from identity contests have also looked to divided sovereignty as a means to avoid ongoing civil wars or secession. Unlike the classic federal regimes, these states were often not embraced by respective groups as the best case scenario, and were not necessarily designed to protect shared values. Instead, federalism for these states was sometimes merely a matter of the most palatable of a range of bad choices, or a utilitarian calculation that it was better to unite on security and economic matters in order to protect their cultural and social way of life from competitors both within and beyond the state. Often referred to as “post-modern” federal systems, these systems in particular were used to address issues where states sat atop bi-national or multi-national polities.<sup>226</sup> Often lacking a sense of shared purpose, the question in these states was how best to prevent implosion or the tyrannical abuse by one group of another, while duly creating the sort of security and stability needed to provide room for development and the growth of national prosperity and consciousness over time.

In contrast to the basis of the American federal system, the division of sovereignty and

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<sup>220</sup>Ward and Fott, *ibid*, 117.

<sup>221</sup>Finer *Comparative Government*; Riker, “Federalism”; Dahl, “Federalism and Democratic Process”

<sup>222</sup>Definition adapted, O’Leary, “Power-sharing, Pluralist Federation,” 51.

<sup>223</sup>Burgess, “Federalism and Federation,” 4-5; King, *Federalism and Federations*; Vile, *Structure of American Federalism*

<sup>224</sup>King *ibid*

<sup>225</sup>Aroney, “Formation, representation, and Amendment.”

<sup>226</sup>Marchildon, “Postmodern Federalism.”

institutions of these states naturally focused more on the expression of group rights. Sometimes misconstrued as “ethnic” rather than “territorial” federations (for in fact, almost all federations in the modern era are based in territorial units rather than resembling the non-territorial sovereignty found in the Ottoman Empire’s treatment of religious minorities or modern Belgium’s creation of dual political structures throughout its territory), these states were much more fluid and flexible than their “constitutional” or “classic” predecessors. They also often maintain a high degree of asymmetry between their respective units, something unconscionable to classic federations.<sup>227</sup>

Table 1: Marchildon’s Classic Federations vs Post-Modern Federations<sup>228</sup>

	Classic Federations	Post-Modern Federations
Examples	United States, Australia, Germany, Switzerland	Canada, India, Belgium, Spain, United Kingdom, Iraq
Trends	Centralizing	Devolution, decentralization
Relationship of Federal Government to Constituent Units	Informal and formal symmetry between constituent units	High degree of informal and formal asymmetry between constituent units
Identity	Language Policy is not deemed an important national issue	Protect and Promote Language Rights and Sub-National Identities
Stability of Institutions	Stable, Agreements based on Constitutional Arrangements or founding bargain	Open to contestation and re-negotiation, even at the constitutional level and subject to informal agreements

Federalism in this context became an “indispensable tool for social and political accommodation,”<sup>229</sup> and as such focused on constructing institutions and processes, whether formal or informal, that could meet the needs of sub-state ethnies for greater autonomy and

<sup>227</sup>Watts, *Comparative Perspective*

<sup>228</sup>Adapted from Marchildon *ibid*. Some changes have been made, namely he identifies 5 distinguishing features of post-modern federal systems: currently undergoing rapid devolution and decentralization, reflect a high degree of formal and informal symmetry between sub-states, protect and promote key minority language rights, regionally based nationalist political parties tend to supplant ideologically-oriented pan-national political parties, and continuous negotiation and struggle to construct alternative to secession, partition, and violence.

<sup>229</sup>Moreno, ‘Ethnoterritorial concurrence’

control over the political management of their populations while preserving the territorial integrity of the state and the substantial benefits in terms of security gained by the incorporation of these groups. By giving power, prestige, resources, and legitimacy to the leaders of sub-state groups, it sought to appease their demands for separation and draw their social capital into existing institutions. This process allowed the federal state to at least in part, reinforce moderates in the case of conflicts and ease tension over the foundations of the state.<sup>230</sup>

Unlike their predecessors, these states show a great deal of flexibility in interpreting founding agreements, with many important decisions made through informal channels that allow for the necessary fluidity and flexibility required to deal with potentially volatile ethnic conflicts. While prone to stagnation, these institutions offered the best hope to prevent intensifying identity conflicts. The result, as O'Leary argues, was a diversity of federal systems that can be thought of in more traditional federal terms as a spectrum, ranging in the extent of their integrative or pluralist attributes.

Table 2: O'Leary's Integrative versus Pluralist Federations<sup>231</sup>

	Integrative (United States)	Pluralist (Switzerland)
Decision-making at the federal level	Majoritarian	Consensual
Powers of the federation versus the regions	Centralized	Decentralized
Recognition of Identities	National	Pluri-national

This classification describes most of the early federalist states as being integrationist, marked by decidedly majoritarian, centralized, and national elements, while the post-modern federal states tend more toward consensual, decentralized, and pluri-national modes of interaction. It is not difficult to see how the integrationist model would apply more naturally to a nation that already shared a common national culture, where the majority was much less feared than in ethnically stratified states where the ideas of consensual or consultative forms of decision-making that include the incorporation of minorities into the decision-making apparatus would be far less

<sup>230</sup> Guibernau, "National Identity"

<sup>231</sup> O'Leary, "Power-sharing," 52.

threatening to vulnerable and easily distinguished minority groups.

Likewise, in highly contested states, the appeal of holding more power in constituent units acts as a barrier to majority domination (even under delegative democracy)<sup>232</sup> and creates an environment more conducive to the preservation of diversity and multiplicity within the nation to the sacrifice of what in some cases may be an ephemeral attempt at uniformity. In general, post-modern federations also consequently tend to remain decentralized, circumscribing the role of the federal government and allowing the constituent or regional entities to retain residual powers not enumerated in the founding doctrine. Finally, the pluralist or post-modern federal regimes are founded on a recognition and preservation of diversity or pluri-nationalism, rather than seeking the homogenisation or nationalization of culture perpetuated by integrationist regimes. In this sense, they “do not treat plural diversity as a threat to the integration of the nation...[but instead seek] to identify some common goals and purposes, and to establish not just political legitimacy but political accountability,” with the belief that “if power is properly shared and varied interests are accommodated, there need not be any threat to power.”<sup>233</sup>

Within these models, Lijphart and McGarry respectively argue a state can establish either rigid groupings known as corporate consociationalism or a more flexible liberal consociationalism.<sup>234</sup> In the latter, group delineations are set in stone and positions of authority are reserved for pre-defined groups. This can be effective when the difference between respective groups is clear, unlikely to change, “internally homogenous, and externally bound,”<sup>235</sup> such as the model used to re-establish peace in Bosnia. Liberal consociations by contrast allow for different groups to emerge through the democratic process and evolution of the state. They establish institutions and processes that are flexible, and open to changes in the identification of the people and thus more respectful of the rights of individuals and open to intra-group heterogeneity.

Of course, even within these groupings, the nature of these founding agreements can be manipulated or simply progress with the development of the state over the time. This is most notably the case with the United States, which O’Leary rightfully places as a prime example of the integrationist model. At its founding, lacking in large part the national culture that would develop between its people, the constitutional dictum retaining non-enumerated powers to the

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<sup>232</sup> Zakaria, *Illiberal Democracy*; O’Donnell, “Delegative Democracy?”

<sup>233</sup> Majeed “India,” 504.

<sup>234</sup> Lijphart, “Self-determination versus Pre-Determination”; McGarry, “Liberal Consociation and Conflict Management”

<sup>235</sup> *Ibid* 170.

states is a classic example of the way in which cooperation on a limited scope of issues can lead to growth over time of a national culture and consequently, radically different, yet acceptable interpretations of key laws that define that national agreement between the federal and regional entities. Originally interpreted in very narrow terms, as the nation grew and strengthened, the dictums of the constitution were increasingly expanded to include a much wider purvey (most notably in the US case regarding what constitutes inter-state trade or taxation) for the federal government. Certainly, even with written constitutions, the laws of federations like all states are open to interpretations that reflect the underlying reality and needs of any given society, and the tension between the division of sovereignty among constitutional units and the federal government remains open to contestation and negotiation even in the most well-established integrationist federal states. These typologies are important however in building upon Marchildon's recognition of the different locus in the foundation of classic and post-modern federalist traditions, highlighting the key debates in the field between proponents of different sets of institutional arrangements. As is typically the case, translating theory into practice in specific contexts presents unique challenges. Naturally, sub-state groups tend to maximize gains along the spectrum toward more decentralized, consensual, and pluri-national regimes and those likely to be in control of the federal government attempt to pull institutions in the direction of integrationism, nationalism, and centralization.

Finally, although not explicit in either of the above typologies, it is important to note in the context of federalism in either Marchildon's "post-modern" or O'Leary's "pluralist" federations, there is a particular focus on what traditional federalism scholars would call vertical federalism as opposed to horizontal federalism. What is the predominant source of tension, frustration, and contestation between the groups is how to divide power between themselves vis-à-vis the central institutions of the state. This does not mean in the more developed that horizontal federalism, or a separation of powers does not exist or is not contested as well, but that in the later-developing, younger federations, these sorts of checks and balances are not seen as sufficient to protect from the encroachment of the central state or dominant ethnies on the interests of other sub-state groups. In others, like Iraq, the emphasis is placed on such guarantees in part because of the fear that the democratic values necessary to preserve horizontal federalism are not present. Inglehart's cross-national survey of democratic countries indicates that this fear is very real in transitioning states, where democracy is correlated globally not to an explicit expression of desire for

democracy amongst wide majorities in the population, but rather in the underlying existence of democratic values such as toleration of difference, pluralism, and interpersonal trust.<sup>236</sup> In a state lacking such deeply held values in the population or governing elite, the horizontal protections of separation of powers can be fleeting and fall easily victim to centralizing coups and the personalization of power characteristic of non-democracies. This indicates in part why groups like the Kurds seek strong vertical federal protections for their own group interests. What is at stake is not just the group rights of the minorities though it might outwardly appear as such, but also a belief that vertical protections of those interests will be fundamental to preserving individual liberty as the only check to balance the centralizing tendencies of a non-democratic culture. In fact, even integrationist federal states originally maintained a heavy focus on vertical checks on power (ie. the protection for slave states in early America through senatorial seats), and in a society without the ingrained and developed history of independent legislative and judicial practice of these early modern federal states, the necessity to have power structures operate as a reflection of the societies to provide real checks on power is even more prominent.

While it is thus clear that post-modern federations represent a break from the unitary states described previously, a growing body of evidence indicates that federal arrangements hold great promise for resolving some of the world's most volatile ethnic conflicts.<sup>237</sup> Through "power-sharing, cooperation, and accommodation" they can provide a "more effective, cheaper, and lasting method of accommodation for developing plural societies" by providing a "meeting point for antagonistic groups and seemingly irreconcilable positions."<sup>238</sup> As proponents of "ripeness theory," the belief that mediated negotiation of protracted conflicts are most ripe for negotiation when they reach a "mutually hurting stalemate,"<sup>239</sup> implicitly recognize, protracted conflicts are most open to resolution when both sides are able and willing to come to some sort of accommodation on the demands of the other side. Looking deeper, Harris argues that not only is this the case, but that the circumstances most likely to bring about the resolution of separatist insurgencies lies in the abandonment by movements of secession in favour of autonomy and the corresponding amenability of the government to revise their preferred outcome from defeat of the

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<sup>236</sup> Inglehart and Welzel, "Political Culture and Democracy."

<sup>237</sup> Moreno, "Ethnoterritorial concurrence and imperfect federalism"; Schertzer, "Recognition or Imposition?"; Requejo, *Multinational Federalism*; Kymlicka, *Multicultural Citizenship*; Stepan, "Federalism and Democracy"; Amoretti and Bermeo, *Federalism and Territorial Cleavages*

<sup>238</sup> Majeed, "India: A Model," 503.

<sup>239</sup> Zartman, *Ripe for Resolution*; Schrod, Yilmaz, and Gerner, "Evaluating 'ripeness',"

insurgency to containment.<sup>240</sup> With Gurr's assessment that "disputes over self-determination are best settled by negotiation and mutual accommodation,"<sup>241</sup> within a framework that does not bring greater material costs or dishonor than the conflict,<sup>242</sup> such an accommodation can most readily occur through some form of federalist arrangement that can both recognize the desire for autonomy of minority groups, but fall short of acceding to secessionist demands.

As many have noted, decentralization and federalist structures have not surprisingly been particularly helpful in curbing ethnic conflict and secessionist movements in Belgium, India, United Kingdom, Moldova, and Spain,<sup>243</sup> by creating opportunities for the government to be more reflective of local needs, providing a creative and innovative testing ground for policy development,<sup>244</sup> increasing the ability of diverse groups to participate in governance and hold positions of authority, establishing greater flexibility in institutions and broader representation of interests,<sup>245</sup> and giving increased control over cultural, social, and economic matters to groups closer to them.<sup>246</sup> Federalism has also been successful at lowering the level of conflict between ethnic groups, by allowing elites to compete for more restrained posts and expanding important political and bureaucratic posts.<sup>247</sup> Finally, it can act to protect vulnerable minorities by allowing "cultural, linguistic, religious, and ideological diversity to flourish,"<sup>248</sup> providing "parties and elites with special opportunities not available in unitary states to respond to regionally distinct electorates"<sup>249</sup> and "granting cultural minorities a high level of protection in crucial areas like education."<sup>250</sup>

However, scholars have also argued that decentralization can exacerbate ethnic conflicts by strengthening regional ethnic parties,<sup>251</sup> creating a basis for discriminatory legislation,<sup>252</sup>

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<sup>240</sup>Harris, "Case Analysis"

<sup>241</sup>Gurr, "Ethnic warfare"

<sup>242</sup>Kriesberg makes this a stipulation of the calculation formed by both parties, "Timing and de-escalation"

<sup>243</sup>CIDCM 2002; Brancati, "Decentralization"

<sup>244</sup>Bednar, *Robust Federation*, 30-35; Oates, *Studies in Fiscal Federalism*

<sup>245</sup>Benz, "Regionalization and Decentralization," 128.

Gurr, *Peoples versus States*; Ornstein and Coursen, "As the World Turns," 20-24; Kaufman, "Possible and Impossible Solutions,"; Lijphart, *Democracy in Plural Societies*; Lustik, Miodownik and Eidelson "Secessionism in Multi-cultural States"; Tsebelis, "Elite Interaction and Constitution "; Stepan, "Federalism and Democracy"

<sup>247</sup>Covell, "Federalization and federalism"

<sup>248</sup>Stevenson, *Unfulfilled Union*, 16.

<sup>249</sup>Chandler, "Federalism and Political Parties," 152.

<sup>250</sup>Bakvis, "Alternative Models of Governance," 279.

<sup>251</sup>Brancati, "Decentralization"

<sup>252</sup>Lijphart, Rogowski, and Weaver, "Separation of Powers"; Suberu, "Travails of Federalism"; Nordlinger, *Conflict Regulation*



contributing to further separation of ethnic identities,<sup>253</sup> and increasing the viability of secessionist conflict by legitimising ethnic leadership and opening new avenues for resource accumulation on behalf of their leadership.<sup>254</sup> The later studies are largely tautological though, taking particular cases of failure and arguing in looking back that they were indeed driven in part by efforts to decentralize political power. In reality, in the vast majority of these cases' efforts at decentralization were a last ditch effort to prevent the implosion of states where strong regional affiliations already existed that had access to requisite amounts of social and physical resources needed to press the state for devolution in the first place. Since the vast majority of the scholarship stems from the break-up of communist regimes, it is not difficult to see how these regimes were already in serious trouble before the introduction of federalism and in most cases these federal systems failed from the outset in the basic test of genuine federation, which "cannot be the result of force or coercion imposed from above and sustained by the threat of military power."<sup>255</sup> In these scenarios, while it may be fair to say that federalism and devolution failed to ameliorate impending conflict, blaming decentralization for subsequent ills puts the cart before the horse. As Brancati showed in a broad-based statistical analysis, while not perfect, decentralized regimes present a "useful mechanism in reducing both ethnic conflict and secessionism," with demonstrably less proclivity toward intercommunal conflict and antiregime rebellion than centralized systems of government.<sup>256</sup> This supports Preston King's observation that

"the inclination to see federations in particular as abstractly less permanent than other forms, has no basis in fact... We may of course cite numerous instance of failed federations, just as we can cite even more numerous failures for a variety of non-federal states... instances of failure only signal the failure of particular experiments, not of federations as such. In none of the cases... is there evidence for some feasible, non-federal alternative that would have been better placed to keep the whole intact. Nor was it clear, morally, that any of these systems should have been held together on the more markedly

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<sup>253</sup>Hardgrave, *India*; Kymlicka, "Federalism a Viable Alternative?"; Dikshit, *Political Geography of Federalism*; Banerjee, *Regional Political Parties*; Gassah, *Regional Political Parties*

<sup>254</sup>Bunce, *Subversive Institutions*; Leff, "Democratisation and Disintegration"; Snyder, *From Voting to Violence*; Roeder, "Soviet Federalism and Ethnic Mobilization"; Snyder and Ballentine, "Nationalism and Marketplace";

<sup>255</sup> Hughes, 'The theory of confederacies,' 6.

<sup>256</sup>Brancati, *Decentralization*, 681.

oppressive terms that a continuation of union might have required.”<sup>257</sup>

Consequently, while far from perfect, the evidence suggest that the need for negotiated agreements between warring parties must be paramount. Repeated studies show that government tactics aimed at defeating insurgent ethnic groups through armed manoeuvres, stoke increasingly radical demands among insurgents,<sup>258</sup> leading to more bloodshed and lessening the opportunity to create stable-inclusive state-building exercises. In countries that have suffered such repeated state failures and persistent ethnic cleavages, federal solutions offer the best hope of accommodating sub-state demands within the boundaries of the current state system. As a brief look at the history of the Iraqi state demonstrates, the alternative to voluntary union is a destructive level of force that both weakens the states and threatens the peace, security, and prosperity of its people.

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<sup>257</sup>King, “Federation and Representation”

<sup>258</sup>Schulze, “GAM”

## CHAPTER 3:

### Historical Overview of the DeFacto Kurdish State

The introduction of unitary, Weberian statehood to Iraq after World War 1 set the stage for perpetual conflict between the central state and Kurdish minority. Bereft of any long-term willingness to devolve sovereignty to outlying areas, the Iraqi state under different regimes repeatedly set about bringing the Kurdish areas into a highly centralized governing structure with little success. The result was a disastrous cycle of instability, with failure on the battlefield against the Kurds contributing to coups and the collapse of successive Iraqi regimes. The internal failure to bind the Kurds to the state-building project invited other sovereigns into the internal affairs of the Iraqi state, bringing it to the brink of collapse and inflicting immeasurable suffering on its people. Still, speaking to the strength of Smith's dictum that "once established as common sense, theories become incredibly powerful since they delineate not simply what can be known, but also what is sensible to talk about or suggest," every new Iraqi regime that came to power set down the same failed path, and ended in a likewise manner.<sup>259</sup>

### A Nation without a State

Often referenced as the largest nation without a state,<sup>260</sup> the Kurds were originally promised a nation-state in the treaty that ended World War I, partitioning the former Ottoman Empire into new states.<sup>261</sup> However, the Kurds' failure to unify under a shared ethnic identity, the rise of Attaturk in Turkey, and shifting interests amongst world powers culminated in the signing of the 1923 Treaty of Lausanne that divided the Kurdish homeland into its modern configuration.

At the heart of this abandonment was the inability of the Kurds to use their numbers to form a cohesive movement for recognition of a shared ethno-cultural heritage.<sup>262</sup> By 1940 most Kurdish communities had risen in some form of rebellion against their central states, but not in unison.<sup>263</sup> Many did not in fact recognize a shared identity across the great mountains that divide Kurdistan, with religious rivalries between competing Sufi *tariqahs* and prominent families,

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<sup>259</sup>Smith, "Positivism and Beyond," 13.

<sup>260</sup>For basic overview LoBaido and Rozario, *Kurds of Asia*

<sup>261</sup>Addendum A

<sup>262</sup>The British searched for a leader for independent Kurdistan, but could not find a suitable candidate, Wagner, *Creation of Modern*, 21-25.

<sup>263</sup>Bozarslan, "Kurdish nationalism."

linguistic divisions, and a history of affiliation with larger empires all hampering a widespread sense of group identity.<sup>264</sup> There was simply no universally politicized movement for Kurdish national rights at the crucial period in which the nation-states of the Middle East were formed.<sup>265</sup>

This allowed geo-strategic factors to weigh importantly in the decision to divide the Kurds into new nation-states where they would come to represent significant minorities. In infancy, Iraq especially was a weak decentralized entity with little historical basis for allegiance and a legacy of empirical expansion from Persian and Turkish neighbors. This vulnerability enticed British state-builders to seek security for their vassal state through control of tribal Kurdish hinterlands lying along its mountainous periphery. The arrangement of the border was designed to act as a buffer zone for newly discovered oil fields in southern and northern Iraq and to address British concerns over the impact removing the Kurds would have on their efforts to establish a pro-Anglo regime in Baghdad, led by the non-native Sunni Arab King Faysal.<sup>266</sup> In the waning age of empires, the sectarian religious affiliations which had long-defined identity led the British to fear that Sunni Arab Iraqis might rather return to Turkey than be subject to rule of the “retrograde and obscurantist Shiah” that would likely take power without the Kurds shifting the demographic balance in favor of the monarchy.<sup>267</sup>

The relative calm in nationalist agitation throughout late colonialism and early independence was largely the result of this ripeness for the functioning of groups outside the state that were “either in those regions which the state had only just begun to penetrate or...which had sources of wealth and power largely outside state control.”<sup>268</sup> This space did not unilaterally challenge local mechanisms of social control or the prevailing decentralization of the crumbling empires, thus failing to drive the disparate Kurds together in a cohesive movement for national recognition. As King Faisal noted shortly before his death, the Iraqi state's predominant role in the Shia and Kurdish areas remained limited to “death and taxes”<sup>269</sup> during this foundational period, an innately de-stabilizing and unsustainable condition over the long-run as the state sought to challenge local leadership in the coming years. Such maneuverability was gradually eroded in fact

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<sup>264</sup>Barkey and Fuller, *Turkey's Kurdish Question*, 5-7.

<sup>265</sup>Lewis, *Emergence of Modern Turkey*, 261.

<sup>266</sup>Detailed account of British concerns with the Shia-Sunni balance, Iraqi economy, and Turkey's claims to Mosul, Habibollah, *Great Powers*; See British FS Officer account, Olson, *Kurdish Nationalist Movement*, 482

<sup>267</sup>Ibid

<sup>268</sup>Ibid

<sup>269</sup>al-Hasani, *Tarikh Al-Wizarat Al-'Iraqiyya*, 303.

through the rise of new Middle Eastern rentier regimes, with peripheral groups like the Kurds increasingly coming under pressure from bloated states and security instruments funded by oil profits and foreign aid. More autonomous from their citizenry than the traditional model of state-society relations,<sup>270</sup> these new state structures were accompanied in Iraq and elsewhere by a virulent form of nationalism among political elites which sought to build strong ethno-national states in the European model in order to ward off colonial influences.

The period leading up to World War II not surprisingly witnessed growing revolts throughout the Kurdish areas although most were locally contained before coagulating around organized movements for independence.<sup>271</sup> External influences that could prey upon these failures of the state-building project in order to sow discord would also instigate heightened Kurdish-Baghdad conflict. The Soviet Union in particular aided in the consolidation of the Kurdish movement through their occupation of Iran,<sup>272</sup> beginning an enduring theme of reliance on external patronage for early Kurdish nationalism. Indeed, a short-lived Kurdish state in Mahabad represented a profound shift in the aspirations of pan-Kurdish resistance to the state system.<sup>273</sup> Despite its quick capitulation after the removal of Soviet patronage and the long exile of the participating Kurdish leadership,<sup>274</sup> new political space had been opened<sup>275</sup> to unite the Kurds around a common vision for an alternative state project. A host of factors conducive to the continuation of ethnic movements found in comparative literature, namely the weakness of the home state,<sup>276</sup> favorable international conditions,<sup>277</sup> and beneficial geo-strategic locations thus created the perfect stage for heightened conflict between the Iraqi state and its Kurdish

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<sup>270</sup> Beblawi, "Rentier State"; Giacomo, "Allocation vs. Production States"

<sup>271</sup> Migdal, *Strong Societies*

<sup>272</sup> Roosevelt, "Kurdish Republic of Mahabad," 122-138.

<sup>273</sup> As Secretary of State Hull noted in a briefing to President Roosevelt, "It is to our interest that no great power be established on the Persian Gulf opposite the important American petroleum development in Saudi Arabia" quoted in Hess, "Iranian Crisis of 1945-1946," 120.

<sup>274</sup> Hess *ibid.* 123.

<sup>275</sup> McDowall, *Modern History of Kurds*

<sup>276</sup> Hechter, *Containing Nationalism*, attributes the rise of ethnoregional movements to three factors, 1) Perception that the host state is weak and can be defeated, 2) organized ethnic movement with a territory and party, 3) low dependence in ethnic territory on state economy. The Iraqi Kurds met all these conditions.

<sup>277</sup> Horowitz, *Ethnic Groups in Conflict*; Suhrke and Noble, "Spread or Containment"; Clark, "International Competition"; All three stress the importance of international context in which state-ethnic conflicts occur. This has been a very important factor for Kurds, given the trans-national nature of the movement and the willingness of regional regimes to use Kurdish movements in geo-political struggles for dominance.

periphery<sup>278</sup> as the state sought more concertedly to join the modern Weberian tradition after World War II.

In summary, while the state grew immensely in terms of both power and prestige during these early years, it could not (nor did it seek to) completely destroy the alternative sources of power that lay along its ethnic periphery. However, as it transitioned into a more narrow focus around a centralized, Arab state-building project under radical regimes, the sporadic and local attempts to contest the state system would correspondingly gather pace as the autonomy that characterized center-periphery relations eroded. The rise of the rentier state spurred broader nationalist Kurdish movements, while separating them into distinct national projects tied to the specific conditions of the recognized sovereigns that opposed them. The cause of Kurdish independence would be characterized by frequent fluctuations in success over the decades to come with a history of negotiation-betrayal-conflict soon typifying relations between Kurdish leaders and successive Baghdad regimes.

### **The Rise of the Rentier State and Heightened Opposition**

As the movement toward a pan-Kurdish state grew in popularity, and educational and infrastructural improvements connected once disparate Kurdish populations, the Iraqi government was forced to seek non-coerced settlements with Kurdish national leaders beginning in earnest after the close of World War II.<sup>279</sup> British allowance until the 1958 coup of peaceful Kurdish nationalism as “the cudgel that made Baghdad bow to London,” provided the means and space for Kurdish official political organization in Iraq on a larger scale than either Turkey or Iran.<sup>280</sup> Iraq consequently saw the most sustained Kurdish uprisings as the state began to slowly erode this freedom, with frequent changes in the Baghdadi government setting the stage for a perpetual cycle of conflict-negotiation-renewed conflict.<sup>281</sup> Agitation for Kurdish independence grew rapidly, becoming increasingly politicized and widespread in opposition to the growing Arab national orientation of the Iraqi state and its new radical regimes. This followed a pattern of ethnic

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<sup>278</sup> Amirahmadi, *Theory of ethnic collective movements* “:“territories located in ‘mountainous or forest areas, or provinces bordering other states with similar ethnic populations, have engaged in ethnic collective movements more frequently and effectively than ethnic provinces in central locations and with flat bare plains,” 99.

<sup>279</sup> In 1945, the Kurds unified to form the Kurdish Democratic Party, an umbrella combining the political legitimacy of Qazi Muhammad with the military experience of the Barzanis, Longrigg. *Iraq 1900 to 1950*, 193-96.

<sup>280</sup> Olson, “Kurdish Question in Aftermath,” 476.

<sup>281</sup> Entessar “Kurds in post-revolutionary Iran,” 914.

conflict in post-colonial states where a dominant core which “views itself as the historic institutional and symbolic creator, and hence appropriate hegemon of the state”<sup>282</sup> comes into contact with a peripheral group like the Kurds who cannot readily adopt this mainstream mythology. In Iraq, this created a “Kurdish mosaic of discord,” whereby the “Iraqi government’s glorification of Arabism and Arab nationalism” under a centralizing state drove the isolation of the Kurdish community from its state-building process.<sup>283</sup>

This isolation occurred despite the fact that the Kurds had been a chief opponent to the Iraqi monarchy, joining forces under Mullah Mustafa Barzani with revolutionary movements to overthrow the regime. While many in the opposition were married to Arab nationalism, an ideology patently opposed to recognition of Kurdish cultural and political rights, the Kurdish leadership believed that their active participation against the monarchy would ensure a post-monarchy autonomy settlement given shared Soviet patronage. The gamble at first appeared to pay off when the monarchy was toppled by a group of military officers led by Abdul Aziz Qassem that immediately promised the Kurds an autonomy deal. Barzani was invited back from exile in the USSR to participate in the formation of the new government, which promulgated a provisional constitution that gave the Kurds' national rights as a recognized minority. The document would in fact do so in similar language to the current Iraqi constitution, stating that while Iraq was an “integral” part of the Arab nation, “Arabs and Kurds were considered partners in this nation,” and was so liberal, it was proposed as a basis for the creation of a provisional constitution after Saddam’s overthrow in 2003.

The Qassem regime initially took serious steps as well to make good on these promises, placing Kurds in prominent positions and utilizing their support to suppress potential competitors to the regime. Peshmerga were even granted Iraqi weapons to fight against pan-Arabists.<sup>284</sup> Barzani’s ability to strengthen his control over the Kurdish movement in Iraq during this period, instilling a unity of purpose heretofore unknown to the disparate Kurds<sup>285</sup> allowed the successful negotiation of further concessions for autonomy. The long-term results would be profound, laying the groundwork for a more organized and capable Kurdish ethno-political movement, while not completely eliminating a rural-urban leadership rift.

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<sup>282</sup>Rothschild, *Ethnopolitics*, 6.

<sup>283</sup>Entessar, “Kurdish Mosaic of Discord,” 84-85.

<sup>284</sup>Rubin, “Abd al-Karim Qasim,” 361.

<sup>285</sup>Rubin *ibid*.

However, this also granted Barzani a national perception as a king-maker in Baghdad politics, posing an existential threat to those that saw Iraq as fundamentally Arab. As with future conflicts, the willingness to grant Kurds a level of national recognition was tempered by a desire to maintain administrative unity in the ruling elite, and fear of Kurdish secession. While Qassem was willing to give credence to the fact that Kurds were distinct from their Arab brethren, he was not prepared to grant large-scale group political rights to them, again opening the door for renewed conflict between the state and its Kurdish periphery. The initially close relationship with the Kurds was in part a strategic calculation, a classic Machiavellian move designed to deploy Kurds who posed little threat and held no interest in challenging Qassem's rule over the rest of Iraq to destroy those who might topple his new regime while it was vulnerable.<sup>286</sup>

Conflict between the Kurds and the centralizing state was indeed virtually unavoidable in the era of extreme Arab nationalism. Qassem almost immediately faced mounting pressure within his own administration to curtail further Kurdish concessions at the risk of losing popular support.<sup>287</sup> He was thus limited in his ability to negotiate, instead opting for a renewed drive to centralize the state in an effort to extend control over Kurdish society rather than compromise with it. This set Qassem's state in opposition to power-holders in Kurdistan and other groups.<sup>288</sup> Barzani was likewise constricted in seeking compromise as his grip over the burgeoning Kurdish national movement grew.<sup>289</sup> The ad hoc nature of agreements with Baghdad, which were often informal verbal agreements, made both sides vulnerable to internal and external manipulations that fueled rapid changes in the relations between them and contributed to the erosion of trust. Unable to reconcile the differing views on the nature of Kurdish autonomy between their supporters, by 1961 political conflict spiraled into armed confrontation between Iraqi forces and Kurdish *peshmerga*.

The ensuing armed conflict between Kurdish forces and the Iraqi army would prove devastating. While Qassem would later regain some of the territory, initial losses for the Iraqi Army ceded control over much of the mountains to the Kurds. The inability of the national army to root the Kurds from their mountainous safe-holds forced the government into a humiliating

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<sup>286</sup> Kurdish officials now compare this to Maliki's recent maneuvers, Interviews, Jan 2009. Erbil, Iraq.

<sup>287</sup> Farouk-Sluglett and Sluglett, *Iraq Since 1958*, 81; Batatu, *Old Social Classes*

<sup>288</sup> Rubin *ibid*, 354.

<sup>289</sup> Some were receiving patronage from Baghdad to divide the movement, Harris, "Ethnic Conflict and Kurds," 118.



ceasefire in January 1963.<sup>290</sup> Qassem's rule could not survive the popular disgust with this defeat. Overthrown by a coup just a month after signing the ceasefire, the new Ba'athist replacement regime would last less than a year itself, freeing the Kurds to again resume running their own affairs as Baghdad convulsed under its own political upheaval.

The eventual rise of Abdul Salam Arif in 1963 however set the stage for renewed negotiations between the Iraqi state and Kurds over autonomy. This time, rivalries within the Kurdish movement would seriously hamper their ability to take full advantage of Baghdad's weakness.<sup>291</sup> Despite these problems, Arif's death in a plane crash positioned the Kurds to gain recognition of many of their demands through a "Twelve Point Programme" negotiated with his weakened replacement, Prime Minister Bazzaz. Before the agreement's implementation however, the consolidation of the new regime under the much-less sympathetic Naji Talib saw its abandonment and renewed fighting between Kurdish and Iraqi forces quickly resumed until a second Ba'athist coup in 1968.

In their second turn in power, the Baathists tried a new tact with the Kurds. Initially adhering to their virulent brand of Arab nationalism, they sought to crush the Kurdish national movement, only capitulating to peaceful negotiations after 20 months of intense fighting began to threaten their own grip on power. Iranian support for the Kurds had aided in these battlefield successes, illustrating again the ability of regional rivals to infiltrate and destabilize the contested state.<sup>292</sup> Iranian aid was purposefully substantial enough to maintain serious problems for Baghdad in order to pressure Iraq into capitulation on outstanding disagreements over their shared border, reflecting the disastrous role that ongoing Kurd-Baghdad conflicts had on its vital security interests. As elsewhere, the weakness of the Iraqi quasi-state invited the external in, threatening in its failure to create a broad-based state-building project the stability of the Iraqi state and its ability to perform the most basic attributes of modern states in securing its own sovereignty vis-à-vis its neighbors.

Saddam Hussein, who would eventually wage the most brutal attempt to date to destroy Kurdish nationalism, thus began his tenure by stepping into the growing breach with an olive branch. The March Manifesto of 1970 brokered between Huseein and Barzani was a landmark

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<sup>290</sup> Qadir has suggested the USSR played a role in the 1961 uprising and its success based on declassified KGB documents. There seems to be some merit to this, but it was not determinate, "Barzani Chameleon"

<sup>291</sup> Entessar, "Kurdish Mosaic," 88.

<sup>292</sup> Despite the Shah's willingness to support the Kurds, he refused to give Kurds the aid necessary to achieve a decisive victory

agreement recognizing Kurdish autonomy in Iraq and setting the stage for peace. In it, the government agreed to recognize Kurdish as an official language in areas where a Kurdish majority resided, appoint a Kurdish vice-president for the national government, conduct an official census in 1974 to determine the boundaries for an autonomous Kurdish government, establish provincial councils to allow Kurdish rule over Kurdish areas, and constitutionally recognize Iraq as a bi-national state.<sup>293</sup> However, Hussein delayed implementation of the more sensitive statues until 1974, giving the Ba'athists ample breathing space to solidify their control over the country and exploit divisions within a Kurdish community in hopes of reneging on the deal. Barzani would later claim that even before signing the agreement, he knew it was a ruse.<sup>294</sup>

In fact, in both its scope and its delay of the most controversial topics until after security had been restored, the March Manifesto had many things in common with the promises made to Kurds in the 2005 Iraqi Constitution. The Kurds were informally promised the second highest position in the land, a delayed census to determine the final status of disputed territory, and recognition of far-reaching autonomy over their own affairs.<sup>295</sup> The Ba'athist government duly made strides to implement less contentious issues.<sup>296</sup> However, stalemate on a suitable Kurdish nomination for the role of Vice President soon exposed ongoing tensions over the sincerity of Baghdad's commitment to maintaining Kurdish autonomy. The major problem, as with the current debate over the final status of Kirkuk and the disputed territories, was the "failure to define the geographic area to be covered by the autonomy provisions."<sup>297</sup> A promised census was repeatedly delayed in oil-rich areas, most notably Kirkuk.<sup>298</sup> Years of hostility had altered the demographic make-up of the city to the detriment of the Kurds and the long historical tie of a large Turkoman community made the ultimate status ambiguous under the autonomy agreement specified for majority-Kurdish areas without a census.

Mullah Mustafa Barzani however refused to even consider Kirkuk's exclusion without evidence of its demographic balance, describing it as the very heart of Kurdistan. Encouraging

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<sup>293</sup>Ath-thawra. "Settlement of Kurdish Problem," 111-221.

<sup>294</sup>Barzani later said, "But (our) people asked me, 'How can you refuse self-rule?'" quoted in Ghareeb *Kurdish Question in Iraq*, 89. Senior Baathist officials deny the original agreement was insincere, 92.

<sup>295</sup> The March Manifesto required that the Kurds relinquish their heavy arms after a four year hiatus. The Kurds negotiating the contemporary Iraqi Constitution refused to consider the non-existence of the Kurdish *peshmerga* as a Regional Guard in part due to these parallels.

<sup>296</sup>Numerous Kurdish officials were given government posts and prominent roles in the 3 northern provinces, steps were taken to use Kurdish as a means of education, and Kurdish youth groups and unions were formed.

<sup>297</sup>Entessar, *Kurdish Ethnonationalism*, 919.

<sup>298</sup>Vanley, "Kurdistan in Iraq," 162.

this intransigence was the support the Iraqi Kurds were receiving from US and Iranian officials. Cold War concerns over the security of Middle East oil in light of the socialist leanings of Ba'athist ideology and a strategic tilt toward the USSR, along with traditional balance-of-power calculations aimed at containing Iraqi power pushed the US, Israeli and Iranian governments to support Kurdish demands through continued funding of Barzani's resistance fighters. This support, albeit covert, antagonized the Ba'athists and reinforced the idea that Kurds were the Achilles heel of a unified Iraq, a veritable fifth column to be exploited by its enemies. This belief fueled speculation that any granting of autonomy or expanded territory would be used to dissolve the territorial integrity of the Iraqi state,<sup>299</sup> and that the solution, rather than establishing a model of governance that could incorporate the Kurdish leadership into the state, was to instead seek once again to destroy their hold over Kurdish society.

War quickly became inevitable as trust between the sides deteriorated. Thanks to foreign support, the Kurds were more equipped to engage the Iraqi Army and a bloody four-year war ensued with both sides suffering heavy casualties. By 1974, the brutality of this war encouraged a cease-fire, but the first Ba'athist proposal was rejected by the Kurdish leadership based on a disagreement over the accuracy of using the 1957 census as a means for demarcating autonomy. In desperation, the Baathist government offered the most far-reaching compromises yet, giving the Kurds an executive council and legislature as part of an 11 March Autonomy Law.

However, the Kurds refused this offer as well, this time because Baghdad would not allow Kirkuk to act as the provisional seat for the new Kurdish government,<sup>300</sup> a perceived indication that it was still not serious about allowing the incorporation of the province into an autonomous zone. The law was also unilaterally announced by Baghdad without proper negotiations between the respective parties. However, as the interests of the United States and Iran shifted in favor of accommodation with the Iraqi regime, the Kurdish position became untenable. By March 1975, the Iranian Shah was ready to sign an agreement with Hussein in order to secure rights to the Shatt Al-Arab waterway in exchange for abandonment of the Kurdish cause. Again demonstrating the toll that the internal state-building contest was taking on the security of the Iraqi state, the Ba'athists were willing to capitulate to Iran's demands to bolster their own rule vis-à-vis the

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<sup>299</sup> Kinsman, "Kurds and Iran," 26

<sup>300</sup> The influence of foreign patrons was paramount in the Kurds' unwillingness to compromise. Barzani had long nursed the hope of an enduring alliance with the United States and expressed his belief to those close to him that the future boundaries of the Middle East and thus Kurdistan would rely on their ability to win the Americans to their cause. Interview with Mustafa Barzani, Mullah Mustafa Barzani's grandson, Washington, DC (15 January, 2003).

Kurds, resulting in the Iran-Iraq Algiers Agreement. The deal effectively decimated the Kurdish resistance with most fleeing Iraq immediately.

The Americans had taught the Ba'athists a valuable lesson in how far the regime would be allowed to go in threatening US oil interests. Later, the US Congressional Committee on Intelligence would acknowledge that,

*"the president...hoped that [the Kurds] would not prevail. They preferred instead that the insurgents simply continue a level of hostilities sufficient to sap the resources of [Iraq].*

*The policy was not imparted to our clients, who were encouraged to continue to fight."*<sup>301</sup>

Indeed, the American and Iranian governments had acted according to *real politick*, taking advantage of the failure of the Iraqi state to come to terms with its Kurdish periphery.<sup>302</sup> Nearly 800 Kurdish villages were subsequently destroyed by the Ba'athists to create a security belt isolating the Kurdish population from the Iranian border and over a hundred thousand Kurds were relocated to non-Kurdish areas in southern Iraq at the beginning of what would become a sustained genocidal campaign to break the back of the Kurdish resistance to the Ba'athist state.

Disagreements among the Kurdish leadership over issues regarding this betrayal would also have long-lasting effects on the organization of the movement, creating a permanent rift within the KDP. Those that subsequently chose to participate in the Ba'athist puppet government earned the label of *jash* or "donkey," for their association as collaborators with the Iraqi regime's continued suppression of Kurdish political and cultural rights. While given nominal roles in the government, the forced deportation of Kurds from oil-rich areas such as Kirkuk and Khanaqin, the settlement of Arabs to those lands, and the creation of a 10-20 kilometer-wide corridor between Iran and Iraq bespoke the true nature of the "autonomy" now granted the Kurds by Iraq's authoritarian regime.<sup>303</sup> Meanwhile, many members of the Kurdish intelligentsia fled to foreign capitals to establish their own movements, sharply criticizing Barzani for his willingness to trust Baghdad. They felt that the Kurds' had already been repeatedly subjected to betrayals by Iraqi regimes, and should relinquish any hope that an Arab government would willfully regard their national rights over the long-term.<sup>304</sup>

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<sup>301</sup> Cohen, "Primitive, illiterate and untutored?" 28.

<sup>302</sup> Pike, "Select Committee's Investigative Record," 85.

<sup>303</sup> Bruinessen, "Kurds Between," 19.

<sup>304</sup> Stansfield and Resool, "Tortured resurgence of Kurdish," 111.

However, the Kurds were soon granted a fresh opportunity by the changing fortunes of the powerful states in their region to make another bid for recognition of their national rights. The Iranian upheaval that led to the downfall of the Shah proved tempting ground for some to exact retribution for the Shah's betrayal of their cause. Khomeini's rise to prominence made it soon clear to most Kurds that their dream of autonomy would not be ushered in on the back of a Shia Islamic Republic,<sup>305</sup> and the coming of the almost decade long Iran-Iraq War consequently had a devastating impact on both Iran and Iraq. In keeping with the pattern, both sides in the conflict sought to encourage and aid those Kurds willing to stand against their enemy. Much of the worst brutality of the devastating war was fought in Kurdish-inhabited land for this reason. With Iraqi support, the KDP-Iran periodically took over large sections of Iranian Kurdistan as did Iraqi Kurds through Iranian support begin to establish short-lived proto-states in Iraq, but fortunes would turn with the tide of the war with frequent re-alignments and increasingly brutal measures against the civilian bases of the Iraqi *peshmergas*.<sup>306</sup>

Iraqi setbacks would in fact lead to another Baghdad reproachment with Kurds, this time through Talabani's PUK, which accepted a ceasefire with the Iraqi government and began negotiations to become part of the anti-Iranian front. In light of the actions taken by the Iraqis after regaining the offense shortly afterward, namely the mass arrest and execution of 8,000 Barzani men, women, and children, it is clear that neither Iran nor Iraq was likely to uphold an agreement with the Kurds when in a position of good fortune. This growing pressure on the Iraqi Kurds by Ba'athist Arabization policies led to another Kurdish reversal as the PUK and KDP sought to unify under the Iraq Kurdistan Front (IFK) in 1987. The IFK then fought to cooperate against the interests of the Iranian Kurds to push the Iraqis out of border regions. The continued success of this alliance in hindering the Iraqi war effort led Saddam Hussein to use increasingly drastic measures to bring the Kurdish population to heel, most infamously, the March 1988 attack on Halabja where the civilian town was bombarded by a barrage of illegal chemical weapons. Gruesome pictures of the carnage, including the horrifying sight of a man's body futilely

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<sup>305</sup>Harris, "Ethnic Conflict and Kurds," 115.

<sup>306</sup>Bruinessen. "Kurds between," 14.

attempting to shield an infant have become a pillar of the shared collective memory that continues to drive the Kurdish movement today.<sup>307</sup>

This was merely one event though in a larger operation, code-named al-Anfal, in which Hussein sought to permanently destroy the Kurdish threat to the centralization of the Iraqi state. The goal was to create a Kurdish-free barrier along Iraq's northern border, with those living within the zone systematically ravaged by repeated chemical attacks, detentions, executions, and resettlement.<sup>308</sup> By the time the Ba'ath Party began full scale Anfal operations from February-September 1988, thousands were already living in unrecognized Kurdish refugee camps in Turkey and Iran. Many camps were detention facilities as Kurds were seen, especially by the Turkish government, as problematic temporary residents. As the numbers grew through 1988-1990, international visitors were denied access, barbed wire rimmed the fences, educational opportunities and employment were limited, and heavily armed troops patrolled the grounds to ensure none of the refugees attempted to settle.<sup>309</sup>

Despite these overt and concerted efforts to end the Kurdish problem through the deployment of force, the Iraqi regime at the close of the decade was more vulnerable and less secure than at the outset. Its weakness demonstrated in the disastrous war with Iran, allowed it greatest strategic foe to ally with many of its own citizens in seeking the downfall of its government, subjected a large number of its population to genocide, and attracted intense (and soon to be unprecedented) international manipulation into its domestic affairs. It also de-stabilized the region, spilling its chaos over the borders into Turkey, Iran, and Syria both through large refugee flows and nationalist sympathy for the plight of co-ethnies in these states. Especially disconcerting was the resulting rising popularity of the Kurdistan Worker's Party (PKK), a communist-oriented organization that became capable of carrying out terrorist activities in pursuit of "Kurdish liberation" globally.<sup>310</sup>

In Kurdish minds, the tragedy of the Iran-Iraq War highlighted the vulnerability of the Kurdish population to the whims of recognized sovereigns, revealing the importance of guarantees for their security that went beyond unilateral concessions easily revoked by states

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<sup>307</sup>Over the course of the Iran-Iraq War, the United Nations Security Council repeatedly sought to admonish or sanction the Iraqi regime, but was prevented from doing so out of fear that it would encourage the consolidation of the Iranian regime. Entessar, "Kurdish Mosaic of Discord," 97.

<sup>308</sup>Daponte, Kadane, and Wolfson, "Bayesian Demography" 1259.

<sup>309</sup>Frelick, "False Promise of Operation," 25.

<sup>310</sup>Olson, "Kurdish Question," 477.

fundamentally set against the realization of a strong Kurdish autonomous government. While it certainly heightened awareness abroad of the Kurdish plight, it did not spur the international community to action to prevent the continued suffering of the civilian population until Saddam's direct attack on foreign oil interests in the 1990 invasion of Kuwait. In the interim, thousands of Kurdish families continued to be relocated from predominately Kurdish areas while Arabs were paid to resettle their abandoned homes. A much larger number disappeared into mass graves still being uncovered throughout Iraq, and the regime itself pursued heightened despotism even among the Arab majority to cover its own internal weakness

### **The Emergence of a DeFacto Kurdish State**

Saddam Hussein's decision to invade Kuwait in August 1990 set in motion events that would catapult the long-standing Kurdish resistance into an established defacto state in northern Iraq. After years of struggle, the Kurds of northern Iraq were the most politically and militarily organized opposition movement within Iraq. This positioned them to take full advantage of Iraq's fall from grace, dramatically tilting the interests of world powers in their direction at a time when regional powers traditionally opposed to their goals were weakened by war or decreasing aid budgets. However, while these particularities allowed for the institutionalization of a Kurdish defacto entity, the weakness of the Iraqi state was a perpetual and cyclical factor<sup>311</sup> that was at least partially attributable to its incessant conflict with its Kurdish periphery. The Iraqi Kurdish opposition during the Iran-Iraq War had greatly contributed to the stalemate, the cost of which drove Baathist desires to seek new revenue sources for its mounting debt in Kuwait.

Kuwaiti oil promised to not only help finance Iraq's rentier state, but the conflict would also provide the notoriously paranoid Hussein with an outlet for the large standing military he had built to fight Iran and the Kurds.<sup>312</sup> In retrospect, it is clear that Saddam seriously miscalculated the determination of the Western coalition to protect its regional interests and global commitment to a post-Cold War security order.<sup>313</sup> During the gathering of momentum to push Iraq out of Kuwait, one of the primary justifications used by both the US and UN was the threat posed by Saddam's proven biological and nuclear weapons programs. The brutal 1980s campaign against

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<sup>311</sup>DeNardo, *Power in Numbers*; Levi, *Rule and Revenue*; O'Connor, *Fiscal Crisis of State* ; For developed world: Lamborn, *Price of Power*

<sup>312</sup> Ambassador Gillespie's comments to Saddam just prior to the war that the US would consider the dispute an inter-Arab matter are most typically quoted as the basis for Iraq's misperception.

<sup>313</sup>Collins, "Some Principles of Long-Term"

the Kurdish north was thrust into the media spotlight, bringing global awareness to the oppression of the Kurds. The fact that at least 100,000 noncombatant Kurds had been killed in such a short period of time provided a vivid demonstration of the potential for these weapons to inflict intolerable suffering.<sup>314</sup>

This publicity took on new importance when Kurds in the north and Shia in the south responded to what seemed to be American encouragement to revolt against the weakened dictator.<sup>315</sup> Both rose up in spontaneous rebellion as their leaders scrambled to return and within two weeks, Kurdish fighters had seized the oil-rich center of Kirkuk.<sup>316</sup> Retribution by Kurdish citizens was exacted on those Ba'ath officials unable to escape the rapid uprising, renewing the seeds of a deep enmity and fear amongst both Arabs and Kurds about the implications of rule by the other group.<sup>317</sup>

When the uprisings began to collapse under renewed attacks by Iraqi aircraft, a solution to the Kurdish refugee crisis was sought by Coalition forces. The vengeance with which Saddam turned on the rebellious Kurds made even veteran reporters uncomfortable witnesses to the suffering of civilians.<sup>318</sup> Turkey's growing refugee population, nearing a half a million, combined with close to a million refugees in Iran to transform the situation into a regional crisis.<sup>319</sup> Ironically then, a Coalition originally justified to retake Kuwait in order to protect the inviolable sovereignty of states would take a dramatic turn as the Coalition began to lobby for the establishment of humanitarian safe zones for the fleeing Kurdish and Shia civilians. The United States, United Kingdom, and France were the primary drivers behind the movement designed to prevent Iraqi aircraft from attacking fleeing civilians using United Nations Security Council Resolution 688 as a justification. The resolution reaffirmed "the commitment of all Member States to the sovereignty, territorial integrity and political independence of Iraq and of all States in the area," but expressed grave concerns for international peace and security caused by the repression of civilians, mentioning Kurds in particular.<sup>320</sup> While it did not specifically authorize any form of action to be taken, the preponderance of scholarship continued to assert the break-

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<sup>314</sup>Human, *Genocide in Iraq*; Makiya, "Anfal" 61.

<sup>315</sup>Bush, White House briefing

<sup>316</sup>Cockburn and Cockburn, *Out of ashes*, 19.

<sup>317</sup>Randal. *After such knowledge*, 40-41.

<sup>318</sup>Firsthand account of the retaking of Kurdish areas after the Gulf War uprising can be found: in Randal *ibid*. Many of those that served in OPC would become lifelong devotees to the Kurdish cause.

<sup>319</sup>Olson, "Kurdish Question in Aftermath," 492.

<sup>320</sup>SCR 688



through in international law represented by UNSCR 688's partial endorsement of the right under certain horrifying circumstances to interference in the internal affairs of another state.<sup>321</sup>

This was the penultimate attack on Iraq's sovereignty brought on by its failure to incorporate the Kurds into a viable state-building project. The Kurds were the first to get a reprieve through Operation Provide Comfort, which delivered humanitarian aid and created a safe haven.<sup>322</sup> On March 3, 1991 General Schwarzkopf stated that Iraqi aircraft flying in their own territory would be shot down and two Iraqi aircraft were duly disarmed by American aircraft later that month.<sup>323</sup> By April a no-fly zone north of the 36<sup>th</sup> parallel was firmly in place. Bereft of his best weaponry against the Kurds, Hussein unilaterally withdrew from the zone over the course of the summer in an effort to starve the local population into submission. The Kurds were thus subjected to a dual blockade; one based on the UN enforced sanctions against Iraq and the second coming from the Iraqi regime itself. This kept the fragile new Kurdish government wholly dependent on its borders with Turkey and Iran for trade, but did not shake its growing independence.

Keenly aware of their vulnerability, the Kurds set immediately about creating a democratic system of government most likely to garner international approval.<sup>324</sup> Elections were duly held in May 1992 to create a parliament and head of government, which would then be responsible for the establishment of a civilian administration to govern the Kurdish territories.<sup>325</sup> The results were accepted by the international community as generally fair, and led to an agreement between the KDP and PUK to evenly split seats among them with a small minority allocation to Christians. A few months later, the leadership proclaimed that a federated Kurdish state had been created within a (future) federal Iraq.

This was the first visible break with the idea that independence or autonomy could best secure recognition of Kurdish rights in favor of a more legalistic and constitutional basis for devolution of the Iraqi state. The principal that this should be the basis for Iraqi democracy was then lobbied for and subsequently adopted by a late October gathering of Iraqi opposition groups

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<sup>321</sup>Roberts and Kingsbury, *United Nations, Divided World*, 35–6.

<sup>322</sup>Frelick, "False Promise of Operation," 26.

<sup>323</sup>Eflein, "Case Study of Rules," 35.

<sup>324</sup>Casperon calls the impetus for such moves in other defacto states "competitive democratization" where the lack of international recognition in many totalitarian states opens the door for defacto states to gain a measure of legitimacy in the international arena by purposefully striving to create more acceptable systems than their recognized sovereigns, "Promoting democracy"

<sup>325</sup>Gunter. "A defacto Kurdish state," 298.

in Salahhadin, the newly-formed United Iraqi National Congress. With the major Shiite political parties in attendance, the resolution gave the Kurds strong bargaining position in any post-Saddam government, but typical to Kurdish history the peace between the parties would not last. Within 2 years, conflict between the KDP and PUK would lead to the disintegration of the Iraqi Kurdistan Front and a civil war that threatened the survival of its protected status. The causes of the conflict were multi-dimensional and fairly predictable given the high stress placed on the Kurdish areas from the double blockade. This made the Ibrahim al-Khalil border crossing from Turkey critical to the survival of the regime, accounting for the only legal means of import/export to foreign markets totaling about \$150,000 a day.<sup>326</sup> The crossing and subsequent duties were under the control of the KDP, and the notoriously opaque nature of Kurdish financing led to accusations by the PUK that the KDP was hoarding the money. Once again, Kurdish leadership rivalries and the non-institutionalized nature of their authority gave external foes ample fodder to exploit.<sup>327</sup>

With freedom fighters desperately attempting to establish a government from scratch in a war-torn society, it was little wonder that the situation resembled “an embarrassing series of failure in administration and economic mismanagement.”<sup>328</sup> However, anxious to stabilize the region, the Americans brokered a peace summit in the fall of 1995 where the parties agreed to demilitarize Erbil, turn over KDP customs revenue to a joint bank account, and reconvene the KRG.<sup>329</sup> The truce would not last more than a year, with renewed fighting backed by weapons from both Iran and Baghdad.<sup>330</sup> By the end of August 1996, Iraqi ground forces and heavy artillery were moving northward to engage PUK forces in support of the KDP. This action remains one of the most dramatic examples of how serious inter-Kurdish rivalries are in Iraq, bitter enough to invite an accused genocidaire into Kurdish territory to prevent an outright victory for their rival, and casts serious doubt about the viability of an independent Kurdish state.<sup>331</sup>

Even more telling was the lack of faith both Kurdish leaders displayed in the American commitment to maintain the Kurdish defacto state. Obviously based on historical experiences

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<sup>326</sup>Gunter, “Kurdish infighting,” 52.

<sup>327</sup>Anderson, “Role of political parties,” 124.

<sup>328</sup>Izady, *Kurds: a concise handbook*, 199.

<sup>329</sup>Yildiz, *Kurds in Iraq*, 49.

<sup>330</sup>Cockburn and Cockburn, *ibid.* 236.

<sup>331</sup>Longtime Kurdish observer at the time noted, “if I didn't know why the Kurds have never had a state of their own, I do now,” Randal, *With Such Knowledge*, 294.

with Nixon, the Kurdish leaders were convinced that the Americans had little interest in the ultimate fate of the Kurdish community. Mistrust had grown through repeated American refusals to take action to alleviate Kurdish suffering under the UN sanctions regime. Little had been done to secure the safety of the INC members residing in Kurdistan either, which Washington now professed were merely recipients of aid *not* allies, or for the hundreds of Kurdish employees that were working with the CIA and other Western agencies.<sup>332</sup> As both groups were hunted down and systematically slaughtered by the Republican Guard troops' advance during the inter-Kurdish civil war, American officials idly labeled the conflict a civil matter. By 1997, Operation Provide Comfort had even been demoted to a surveillance operation and many of the Western allies were wavering in their commitment to continue support for its operation.<sup>333</sup> Further American-brokered negotiations culminated in a September 1998 meeting in Washington, DC in which both Kurdish leaders agreed to eschew armed conflict, reschedule new elections, share revenues from border crossings, and prevent the incursion of outside powers in internal disputes in the Washington Accord. While the two parties were to eventually integrate their separate governmental structures, in essence this agreement led to a partition of the defacto Kurdish state between the KDP-controlled areas in Dohuk and Erbil and the PUK area centered around Sulimaniyah. Both unsurprisingly struggled to make significant progress at addressing the most pressing social, economic, and political needs of the war-ravaged Kurdish territory, although most of the villages and schools in the region were rebuilt.

While the problems experienced by the Kurds were undeniably the result of deep cleavages between them, the ambiguous legal definition of the territory also significantly contributed to the chaos that reigned throughout the 1990s. Throughout the decade, electricity was periodically cut off, effectively undermining any attempts to build a solid economic base and promoting illegal activities that bred a culture of corruption that resulted in a sharp deterioration in the social and political bonds of the Kurds.<sup>334</sup> The equipment needed to break this dependence on foreign sources of aid was forbidden under international sanctions, and the traditional economic base of the Kurdistan Region was undermined by the nature of the Iraqi-wide agricultural aid that forced a certain percentage of Iraqi oil wealth to be used for food imports that competed with local Kurdish production. In the period directly after the war, food prices exploded

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<sup>332</sup> While some were eventually evacuated and resettled in the United States, it was long after.

<sup>333</sup> Hirst and Dabrowska, "Britain tells Kurds"

<sup>334</sup> Laizer, *Martyrs, traitors, and patriots*, 110-113.

by 200%, demonstrations racked Kurdish streets, and unemployment was reportedly as high as 80-90%.<sup>335</sup> Security was only restored through the deployment of 70,000-100,000 well-trained Kurdish peshmerga to protect the enclave and perform general security duties.<sup>336</sup>

Both parties also remained mired in guerilla organizational forms that proved highly problematic for governing, investing the small leadership with unchecked authority and seeking to eliminate any potential competitors for power.<sup>337</sup> In this context, the power-sharing agreement proved a dismal failure. Both feared that the results of a competitive election could lead them into a dangerous downward spiral of competition. In fact, the establishment of two administrations did arguably produce some benefits for the Kurdish population in lieu of more institutionalized checks and balances, as both sides were forced into a peaceful competition to prove their ability to produce better results than the other with the expectation that they would one day be forced to the polls.

For both the Kurds and their supporters, this era would serve as a patent reminder of the importance in negotiating a settlement for the legal existence of their regime with the central government. Such an agreement, which would define the structure of the Kurdish Regional Government and end the limbo under which it operated, would also provide access to markets and institutional oversight that could alleviate their own inter-rivalries by providing opportunities at both the regional and national level. It would also end the capricious way in which Baghdad could abuse central authority without fear of repercussion and encourage a healthy diversification of the KRG's revenue stream, thus preventing reliance on hostile neighbors for basic resources. Both Kurdish leaders recognized this even before the war to topple Saddam in fact, stepping up earlier attempts to negotiate a settlement for federal autonomy with Baghdad.<sup>338</sup>

However, the chance to negotiate a deal in earnest would come in an unexpected way. The September 11, 2001 attacks on the United States and the resulting re-engagement of an activist American foreign policy in the Middle East provided the Kurds with an unparalleled chance to create an institutionalized, recognized, and clear status for their fledgling statelet within the confines of a democratic Iraq. Events transpired to ensure this result, as the original invasion plan

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<sup>335</sup> Murphy, "Economy tests Kurds' self-rule," A10: Some of this hardship can be attributed to the exodus of aid organizations during the Kurdish civil war, which caused about half of the active agencies to flee, Bodnarchuk, *Kurdistan: Region under Siege*, 88.

<sup>336</sup> Ahmed, "Laying foundation for Kurdistan," 150-151.

<sup>337</sup> Anderson, "Role of Political Parties," 133-136.

<sup>338</sup> Khadduri and Ghareeb, *War in Gulf*, 210.

had to be re-written on the eve of the war to topple Saddam when Turkey refused to allow the US-British led coalition to use its territory or bases. This forced the Kurds to step into a key role as US ally in the war, providing on-the-ground intelligence and working in conjunction with American troops air-lifted into the north.

Thus, as the war commenced, the Kurds found themselves the strongest local allies in the “Coalition of the Willing,” united once again to present a common Kurdish front for the liberation of Iraq. This new alliance would be the most enduring since their split in the 1970s, with both sides vowing to work out their differences behind closed doors in an effort to maximize the gains they could make for the region in negotiations with a new government in Baghdad. While the INC was in disarray,<sup>339</sup> the Kurds were characteristically prepared to fight to institutionalize a state they could fully participate in for the first time. The lessons of their past failures would provide a platform on which they could lobby for more substantive legal rights. As active members in the INC, they had managed to legitimate the idea of federalism as a basis for administering the country and gain valuable allies amongst the majority Shia community for the idea that a weak central government was critical to preventing a return to despotism in the country.

However, the Kurds were also now more skeptical of paper promises. Back in 1958, they were already discounting Arab commitments to their self-rule as passing fantasies and fleeting promises.<sup>340</sup> By 2003, this legacy of negotiation and betrayal would lead the Kurds to demand concessions from their new partners that went much further than the deals of the past. The Kurdish leadership had learned that the common Iraqi saying “love your neighbor’s Kurds, beat your own” contained more than an element of enduring truth. This realization about the enduring and important divisions within Iraq would require not only the weak autonomy deals of the past, subject to unilateral destruction by a reinvigorated Baghdad, but more substantive institutional checks and balances to prevent the devastating tyranny that had characterized Iraq’s history.

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<sup>339</sup>For a full account: Gunter, *Kurdish predicament in Iraq*

<sup>340</sup>Quoted in Rubin, “Abd al-Karim,” 357.

## CHAPTER 4:

### **The Foundation for Resolution: Negotiation of a Decentralized, Asymmetrical, Federal State**

*“Effective federal governance must be based on a written constitution and the rule of law. The constitution sets the basic framework and principles of the federation. A constitution can be symbolically important in fostering unity or discord...”<sup>341</sup>*

The new Iraqi state is a remarkable and revolutionary break from the unitary regimes of the past. Drawing away from a definition of sovereignty that allowed little room for minority participation, the process through which the new government formed and a broader trend toward federal solutions led to the introduction of vastly different political institutions. These institutions reified the separate, distinct, and unequal application of sovereignty in the new Iraq. This chapter analyzes the roots of this system in theory as the first step in arguing that it creates the foundation for Kurdish participation in the state-building project and improves the likelihood of an ultimately successful state-building endeavor throughout the country. The first section steps away from the Iraqi case to contextualize the historical experiences described in the second chapter into the broader legacy of state-building along the Weberian model in the post-colonial world, in order to argue that the roots of Iraq’s state-building failure lay in its long adherence to a form of statehood ill-suited to its society and time. The second section examines the move away from this model in the post-war Iraq to a negotiated form of post-modern federalism that rejected this legacy, and laid the foundation for incorporation of the Kurds into a more inclusive and successful state-building endeavor.

### **Laying the Foundation for the Iraqi State**

The historical legacy of Iraq is revealing not just because of its implications for the future institutions of the state, but also as evidence of a much broader trend in the development of modern states throughout much of the world. As previously noted, the values and practices associated with the Weberian state that developed out of the feudal system in medieval Europe were designed to address the needs of a particular time and place.<sup>342</sup> Strong, centralizing sovereigns could provide common goods to overcome the major challenges of their day:

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<sup>341</sup> Anderson, *Federalism*, 55.

<sup>342</sup> Guehenno, *End of Nation-State*

protecting against brigands, offering a larger market for trade, enabling increased specification, and reducing the overlapping burdens of extraction placed on the population by increasing standardization and administrative efficiency. However, once created and spread across the globe, the Weberian ideal of the centralizing state became the definition of a modern political community, regardless of its ability to address the particular needs, restrictions, or opportunities presented in the various locales suddenly birthed into statehood by the process of de-colonization and collapse of empires.

These institutions were not value neutral. The dominant political philosophy of many European states at the time of colonization was based on a particular brand of state philosophy derived from the works of Bodin and Hobbes, which represented a version of sovereignty founded in strongly centralized and administratively unitary states, which “made the word of the sovereign law,” thus granting the sovereign the sort of “overweening power” that naturally “invited tyranny.”<sup>343</sup> It is epitomized in definitions of the modern state in academic literature as being comprised of the following six characteristics:

“First, it should be territorially distinct, possess a single sovereignty, and enjoy legally unlimited authority within its boundary. Second, it should rest on a single set of constitutional principles and exhibit a singular and unambiguous identity...[Third, represent] a homogenous legal space within which its members move freely, carrying with them a more or less identical basket of rights and obligations. Fourth...all citizens are directly and identically related to the state, not differentially or through their membership of intermediate communities. Fifth, members of the state are deemed to constitute a single and united people...Sixth...if the state is federally constituted, its component units should all enjoy the same rights and powers.”<sup>344</sup>

Clearly, this dominant definition of the state is a “thoroughly homogenizing institution,”<sup>345</sup> with little room for ethnic or cultural difference. It was crafted in a particular time and space as an answer to the disintegrating effects the end of feudalism had on Europe's political units. With the objective of overcoming the ensuing religious and political chaos and re-instituting strong sovereigns, both Hobbes and Bodin sought a strong defense for the absolutist monarch and held a

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<sup>343</sup>Krasner, “Sovereignty,” 21.

<sup>344</sup>Parekh, *Rethinking Multiculturalism*, 41-42.

<sup>345</sup>Axtman, “State of State,” 264.

proclivity toward order even when it diminished or trampled on basic principles of natural rights.<sup>346</sup> They were seeking to re-establish legitimacy for already existing sovereigns with a long history of political association, a task that set them, “resolutely against all disintegrating tendencies” in favor of a sovereign that was uniform, complete, and unquestionable.<sup>347</sup>

This standard became the benchmark for the development of states across the globe, reconstituted in such works as Huntington’s *Political Order in Changing Societies*, which reads as much like a “how-to” manual for the leaders of developing states as Machiavelli’s *The Prince* once did for the Renaissance sovereign.<sup>348</sup> Rejecting divided sovereignty models, the argument was put forth that new states must follow the “Continental European” model in which power is first centralized, rival social orders crushed, and the state’s claim to sovereignty made whole before any thought of decentralization could occur.<sup>349</sup> Drawing on Weberian state theory and comparative works on early European state-building, these early political works were applied to a new era where they were pitted against the diversity in social and political order inherent to many societies in favor a strong, unitary state with complete mastery over its domain and people.

Dominant for many years in state-building,<sup>350</sup> the theory was bolstered by the developmental success of BRACs in South America and East Asia, who utilized often brutal measures to put down rival social forces and concentrate power in central institutions.<sup>351</sup> The focus was inexorably on the indivisible unity of the state. Impediments to this order, most

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<sup>346</sup> Dunning, “Jean Bodin on Sovereignty,” 82-90.

<sup>347</sup> Ibid 86.

<sup>348</sup> Huntington rejects the American political system as unsuitable for late-developing nations because its political system preceded the rise of popular participation in the process and thus did not have to contend with old social forces, and could consequently afford to create a system of dispersed power without undermining the state. This prospective is extremely ahistorical: Merkl, “Study of European Political,” 465.

<sup>349</sup> Huntington, *Political Orders*: Time has revealed many flaws in logic, namely the divergent paths taken by his successful models: North Korea, Mexico, Tunisia, North Vietnam, Israel, and India. The praise for Attaturk’s creation of “a stronger state by limiting its scope to ethnic Turks and excluding...other groups that had played key roles in the Ottoman Empire,” (310) as wise in gaining a “national of political community of equals” (311) is especially dubious given the ongoing unrest.

<sup>350</sup> Migdal, *Strong Societies and Weak States*.

<sup>351</sup> Throughout the 1960s and 1970s, these states used Huntingtonian methods to put-down popular uprisings, centralize political authority, and overcome some of the impediments to development brought on by status as late-developing nations. Their success seemed to conform to theory and much literature built upon these stories to advocate that states with high levels of capacity would inevitably require the destruction of rival societal sources of authority and the vestment of not only administrative control, but also social control, in the state. These states, even when administratively decentralized on paper, were in fact heavily unitary. Any power in the localities or regions was delegated at the discretion of the center and could thus be revoked unilaterally. In the end, even where they practiced administrative decentralization, the devolution of power was non-existent: Almond and Coleman, *Politics of Developing Areas*; Apter, *Politics of Modernization*; Finkle and Gable, *Political Development and Social Change*



commonly traditional forms of power rooted in kinship, religion, or some combination of the two, were treated largely as transitory impediments to the march to modernity that would spur increasing connections between the population and growing political and social sophistication.<sup>352</sup>

However, this approach was not only ahistorical, but also failed to conceive of the way in which the new states differed from historical predecessors in places like Iraq. Unlike the early European states that evolved through a four phase progression from unification to mass inclusion in governance, mass political participation, and *then* economic redistribution, the new states were simultaneously faced with these challenges due to rising expectations in the modern era that forced them into a “cumulation of critical challenges” that was fundamentally distinct from the Western European experience.<sup>353</sup> Indeed, while suitable to a small number of new states, this model was ill at-ease from the onset with the birth of most, which lacked the national or historic civic culture that under-girded comparable European states. These states were the complete opposite in fact of early European predecessors, birthed into a semi-life devoid of any unifying element or rational boundaries. Ethnically, religiously, and often culturally heterogenous, Lord Acton’s observation that based solely on nationalism many would be forced into an existence “according, therefore, to the degree of humanity and civilization in that dominant body which claims all the rights of the community, the inferior races are exterminated, or reduced to servitude, or outlawed, or put in a condition of dependence,”<sup>354</sup> proved disastrously true.

Without a unifying past, many states were propelled in their quest for uniformity into virulent nationalism.<sup>355</sup> These virulent forms of nationalism, while often successful in mobilizing against class-based interests in places like Latin America, were much less effective in inducing ethnic or religious minorities to join in the state-building endeavor. Contrary to some arguments, these loyalties were not simply exploited by elites, but instead were a reflection of deep attachments that went to the core of individual identity<sup>356</sup> and thus could not easily be disregarded. In fact, many states excluded minority groups like the Kurds entirely from participating in the myth of the nation or its state-building project, creating a core conundrum, whereby the state placed its continued legitimacy on the support of only one segment of society to the complete omission of others. Those outside became enemies of the state, removed from

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<sup>352</sup> Almond and Coleman, *ibid*; Deutsch and Foltz, eds, *Nation-building* (New York 1966)

<sup>353</sup> Rokkan, “Dimensions of State Formation,” 563.

<sup>354</sup> Acton, “Nationality”

<sup>355</sup> Smith, *Ethnic Origins*, 125.

<sup>356</sup> Horowitz, *Ethnic Groups in Conflict*, 104.

decision-making circles through sometimes explicit laws meant to further national progress on the basis of the chosen ethnicity. Even when these states retained periodic democratic facades, the laws of their ethno-democracies<sup>357</sup> excluded minority participation through language laws, quotas or overt discrimination, all justified by the quest to build a strong and united nation devoid of difference.<sup>358</sup> In the end, the quest for unity came not to mean that every citizen was equal before the state, but rather that the state would first create the right type of citizen and only through this process would they gain equality before the eyes of the state.<sup>359</sup>

The contemporary state system, unable to solve the problem of many nations by giving each nation its own state, consequently became beholden in many places to a version of statehood inevitably mired in interminable and periodic ethnocidal conflicts. This was not just an issue with despotism, but rather with the roots of a state philosophy that fundamentally confused “nation-building” and state-building.<sup>360</sup> In an era where national consciousness had been raised, the increasing penetration of an alien state into previously autonomous sources of ethnic social order were just as likely to produce a realization that a “people” existed that were different from the majority (or in some cases minority) that ran the state as it was to impel them toward assimilation.<sup>361</sup> These states were not like ethnically-homogenous Japan and Germany. Instead the creation of unitary states in many of these cases was not a matter of nation-building, but rather of “nation-destroying.”<sup>362</sup> Without a strong commitment to consensual, federal, or inclusive government practices, they pitted a significant number of their own citizens through their most deeply felt desire for identification and representation against the state project.

The unsurprising turmoil caused by the introduction of this political form thus culminated towards the late 20<sup>th</sup> century in scholars questioning whether “it may not be possible, or even desirable, to root political identity unambiguously in mutually exclusive geographical entities.”<sup>363</sup>

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<sup>357</sup> Smooha, “Types of Democracy”

<sup>358</sup> In Turkey, it meant only those speaking Turkish could gain government positions and went so far as to ban the use of Kurdish and other languages, even in the naming of children. In Sri Lanka, it meant quotas that sought to limit minority entrance into civil service or public education facilities.

<sup>359</sup> O’Leary “Power-sharing”

<sup>360</sup> Conner, “Nation Destroying”

<sup>361</sup> Walker, “Nation-building or Nation-Destroying,”

<sup>362</sup> *Ibid*, 335-336.

<sup>363</sup> Kobrin, “Back to future,” 367; Many began to question whether states of any typology could feasibly develop in areas of the globe increasingly exposed to international currents of globalization, proclaiming instead the potential for neo-medievalism. Also, Cantir and Schrod, “Neomedievalism in Twenty-first Century”; Kaldor, *New Wars*; Kaplan, *Coming Anarchy*

Rather than conform to the state-building project of assimilation, minority groups increasingly called for the right to establish institutions that would include and represent them, whether through secession or federal autonomy. Even in the heart of the modern state revolution, ethnic groups from the United Kingdom to Spain to Belgium spoke out for representation in sovereign institutions that would respect not only their individual, but also group rights.

However, nowhere was the problem of adopting the norms and values of the Weberian centralizing state as telling as in places with territorially-centered minority communities like Iraq. While some initially argued that the Iraqi Ba'athist regime seemed to be following in the footsteps of Huntington's success stories, the reality that the historical socio-economic struggles of Iraqi society were vastly different from the BRACs' experience became evident through repeated coups, bouts of genocidal ethnic-sectarian fighting, and the eventual bankruptcy of a national state ideology. Where the BRAC states effectively mobilized against class-based conflict, benefiting immensely in the East Asian case from a long bureaucratic tradition and near destruction of traditional elite relationships,<sup>364</sup> the Iraqi state was faced with more parochial societal divisions that could not be suppressed solely through the developmental process. As other scholars have noted, these cleavages were totally different in nature and form from those in Latin America, having "developed over centuries, and involving an intermixture of race, social structure, and economic status" that posed much more serious problems for nation-building.<sup>365</sup> A unitary Iraqi state, being unable to either rely on its religious or ethnic majority was instead forced to rely solely on coercive force,<sup>366</sup> contributing to an inevitable cycle of insecurity aptly described by Holsti whereby:

"The attempts to create "nations" where none existed before drive secessionist and irredentist movements, most of which take a violent form under the rubric of the inherent right of self-determination. Without a nation, a state is fundamentally weak. But in attempting to build strength, usually under the leadership of an ethnic core, minorities become threatened or excluded

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<sup>364</sup>Also, Gold, *State and Society*; Amsden, "State and Taiwan's Economic"

<sup>365</sup>Although like most scholars he fails to understand the full significance of his own statement on the matter due to a predilection toward main-stream modernization theory, he at least acknowledges the importance of this difference, Rivkin, *Nation-building in Africa*, 238.

<sup>366</sup>For the relationship between center and peripheral ethnic relations in modern states: Parker, *Geopolitics of Domination*

from power. This is the foundation of the "insecurity dilemma" of most new states. [AND] It is the source of most wars in our age."<sup>367</sup>

As the historical chapter demonstrated, the price for this has been high in internal chaos, the inability of the Iraqi state to defend itself against potential foreign competitors, and a genocidal campaign against a segment of its own population. While most visible, the Kurds have not been the only victims. As illuminated by Kennedy, the over-extension of a political authority's power often strains its resources to such an extent that the economy becomes too weak to provide the basic resources for the defense of even the core political unit from potential rivals.<sup>368</sup> This has certainly been true in Iraq, where ongoing internal conflict prevented the Iraqi army from effectively defeating its main regional rival even as Iran struggled to recover from a revolution. Repeated regimes were driven into ever-increasing levels of despotic control over an oppositional society.<sup>369</sup>

The applicability of the modern European state model that developed from a particular historical social and economic context was thus inherently unrealistic given the inheritance of many states like Iraq of unnatural, pre-determined and incongruous state structures and boundaries,<sup>370</sup> an international normative shift that made the previous dependence on extreme forms of coercion morally bankrupt and subject to armed resistance, and the widespread legitimacy of ideologies like nationalism, democracy, and self-determination.<sup>371</sup> The response of these states to such challenges was inherently limited by the time in which they lived, unable to follow the path of the early European states they faced a conundrum "that the only way for the state to have a chance to develop the capacity necessary in order to *satisfy* the expectations of...the

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<sup>367</sup> Holsti, *State, War, and State*, 330

<sup>368</sup> Kennedy, *Rise and Fall*; Goldstone, *Revolution and Rebellion*

<sup>369</sup> The importance of this difference then in relation to the success of a unitary Iraqi state, can also be summed up by Barkey and Parikh in their broad overview of literature on the state, concluding that a large-scale comparison "demonstrates that despite variations in the levels and types of state strength, autonomy, and capacity, the specific characteristics of economic development, even when state directed and controlled, are ultimately shaped by the nature of state-society relations (535). Contrary to Huntington's thesis, social forces and sources of legitimacy were not just something to be overcome in the inevitable march toward modernity, but rather were critical variables that would determine the success of any state-building project and would fundamentally impact policy effectiveness and development trajectory.

<sup>370</sup> Ibid, 531; Also: Kasfir *State and Class in Africa*; Azarya "Re-ordering state-society relations"; Callaghy, "State and Development"

<sup>371</sup> Middle East: McDowall, *Modern History*; Batatu, *Social Origins*; Anderson, *State and Social Transformation*; More broad: Smith, "State-making and nation-building"; Mazrui, "Triple Inheritance"

international community would be for it to first *violate* those expectations.”<sup>372</sup> With no room for their expression within a unitary Arab Iraqi state, the critically important social capital of the Kurdish region thus seemed perennially and hopelessly pitted against the state. Iraq as a unitary Arab state simply did not have the capability to incorporate or destroy its peripheral areas.

However, the problem was never with the existence of Iraq as a state, but rather with the type of state being constructed. In fact, outside of the particular considerations of the Iraqi experience, theorists disappointed by the outcome of decades of post-World War II state-building increasingly articulated an alternative vision.<sup>373</sup> Turning first to the American experience, as revolutionary in its attempt to overcome the problems associated with divided sovereignty, a system whereby both the central government and the constitutive states maintained exclusive room for maneuver and attributes of sovereign authority presented the opportunity to reconcile competing claims to representation and sovereignty. The American system of federalism thus laid the groundwork for the development of a system of government fundamentally opposed in its philosophy to the dominant unitary state of Europe’s past. Its success in providing its people with peace, security, and prosperity, while binding them progressively and increasingly to a national system inspired the transformation of many European states themselves in the face of the unexpected persistence of group identity claims throughout the 20<sup>th</sup> century in places as far abreast as Belgium, Canada, and India.

While most post-colonial states followed the unitary Parliamentary systems of their colonizers, some states thus founded a discursive and inclusive project to bind disparate populations together in a single state by adopting and transforming federal norms to create a post-modern framework for the unequal practice of federal sovereignty among their constituent units. Still lacking the underlying civic values of their early federal predecessors, these states raised strong institutional protections for the dispersal of sovereign power in order to protect and maintain the diversity of their societies from the impetus toward destructive centralizing practices

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<sup>372</sup>Rear, *Intervention, Ethnic Conflict*, pviii.

<sup>373</sup>While the European experience did often lead to a unitary, inviolable state centralized in a national capital, its own diversity also led to regimes with extremely different centers of social and administrative authority designed in particular to recognize the existence of differences in opinion and establish a mechanism to maintain social order and incorporate disparate populations without coercion (Victor, “Ethnicity and Conflict”) Althusius, Pufendorf, Hugo, Spinoza, and Leibniz looked at the experience of the early Dutch and German states and found an atypical form of statehood, similar to forms of confederation found in Ancient Greece and Rome that allowed for multiple sources of sovereignty to work in pursuit of common purpose (relevant writings in Ward and Ward, *Ashgate Companion*)

found elsewhere. These projects surprised many with their resilience, spurring the continued existence of seemingly unwieldy democracies in places like India and post-Suharto Indonesia. This ensuing state-building literature was much more suited to inform the process in Iraq, for while it tended to focus on the articulation of group interests over individual citizenship, it effectively contested the notion that any division of sovereignty spells disaster for the survival and unity of a political community,<sup>374</sup> and outlined a mechanism whereby states with diverse societies could seek to incorporate peripheral areas into the state-building process by erecting barriers to the overweening power of a centralizing state.

Naturally then, with the inclusion of Kurdish representatives in the construction of an Iraqi government, the first task of the new Iraqi leadership (in partnership with their American and British overseers) would be to determine what type of state model Iraq would adopt. After almost a hundred years of attempting to force a square peg in a round hole, the new Iraqi institutions negotiated between the Kurds and other Iraqi authorities would seek a mechanism to represent difference and provide a peaceful mechanism to resolve potential conflict, thus overcoming the brutal pattern of aggression toward dissent that began with the massacre of Assyrians by the Iraqi Army in 1933.<sup>375</sup> The new system would need to be revolutionary to overcome this ingrained process of behavior, which was imbedded in “institutional structures of the past,”<sup>376</sup> and go beyond the sort of ethno-democracy rooted in centralized states elsewhere. This would require a reformulation to satisfy the desires of the Kurds for cultural, linguistic, and political expression, prevent the return of oppressive dictators that subjugated and brutalized even the Shia majority, and yet still hold enough power at the center to keep the country together, stable, and democratic.

### **The Foundation of the New Iraqi State**

With the armed overthrow of the Ba’athist regime by the United States-led Coalition forces in March 2003, the various Iraqi opposition groups and their foreign overseers were faced with the monumental task of reconstructing an Iraqi state that had been historically prone to violent coups, armed insurrections, regional war, and the brutal suppression of political difference. In a regional context that had witnessed widespread disillusionment with pan-Arabism, socialism, military and Islamic revolutions and an outside benefactor determined to

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<sup>374</sup>O’Leary, “Power-sharing”

<sup>375</sup>Kelidar, “States Without Foundations,” 325.

<sup>376</sup>Krasner, “Review,” 239.

usher in a new wave of democracy the options could outwardly appear extremely limited. The deliberations were after-all predetermined to produce a constitutional republic, based on periodic elections, which itself would radically transform the Iraqi state. However, this form of government still left a wide-berth for those that participated in the drafting of the TAL and permanent Iraqi Constitution. Both documents, in re-constructing the coercive and administrative force of the Iraqi state, would critically describe the process of political negotiation that would be responsible for adjudicating disagreements and dividing authority between rival social forces.

Significant questions would naturally surface over the best form for the democracy, which could both prevent a return to despotism and/or discourage fragmentation. In fact, the most important factors in structuring the new Iraqi state are also the most critical to understanding the potential for success at accomplishing a stable, authentic state-building experience. Each of these factors must be taken in turn, being 1) the roots of the new system, entailing both the type of federalism it embodies and the institutionalization of mechanisms to resolve conflicts between its different political communities and maintain a sphere for independent action for its respective people against the centralizing tendencies of the state, and 2) the process through which the institutions of the state were negotiated, rooting the new state in a constitutional covenant between the communities and vesting sovereignty in a compromise designed to hold the state together by incorporating, rather than destroying, the diverse roots of authority found in its society.

### **Debating the Form: A Unique Federal System for Iraq**

As the process to form a new Iraqi state began, many pundits and scholars questioned whether any project no matter how cleverly constructed could hold the Iraqi state together and even more whether a democratic system could blossom.<sup>377</sup> The Kurds, long estranged from the central Iraqi state and well-positioned to press their sectarian demands in the wake of its destruction were seen as sure spoilers. After years of long and bloody fighting for their own state, how could the political leaders of the Kurdish movement be expected to now work toward Iraq's re-construction? How would their demands be reconciled with the centripetal needs of a state, already subjected to a legitimacy crisis by its birth in the actions of a foreign military intervention,

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<sup>377</sup>Particularly among skeptics, pointing to polling that suggests Iraqis still maintain an irreverent attitude toward many of the basic principles of democracy, favoring stability and security over representation or freedom.

into a viable state-building project that could appeal to the large majority of Arabs, themselves divided by religion and history? How could all of this be accomplished while avoiding the vestment of the Iraqi state with enough power to lure new tyrants?

There is no doubt that the original meetings regarding the reconstruction of the Iraqi state produced very little that the respective parties could agree upon. As the central thrust of this work implies, the principle factors once again revolved around a desire for a strong, centralized, and unitary Iraqi state and the seemingly inevitable and unending Kurdish opposition to that vision. The chief debate within the confines of the constitutional republic was thus the tension between Iraq's two major ghosts: the often deceptive centripetal pull of resource-fueled authoritarian despotism and the centrifugal tug of its diverse and unwieldy sectarian communities. Simply put, how best to construct an Iraqi state that could provide enough power at the center to prevent the perceived secessionist or fragmentary tendencies of its ethnic, linguistic, and religious differences, while still allowing strongly organized minorities like the Kurds (or traditionally oppressed majorities like the Shia Arabs) enough space to pursue the sort of political, social, and cultural independence they saw as *quid pro quo* for their participation in the construction of the new state.

Given the open process through which the new state would be constructed, scholars and policy-makers flooded the public space with a series of arguments in favor of different types of institutional formations that could ease the centripetal-centrifugal conundrum. All brought ideological baggage about what constituted a strong state, some ill-suited to the reality now faced in constructing a voluntary union of Iraq's people. The discussions would not be conducted in a vacuum. They would take place in an era where federalism had gained increasing ascendancy, and the resolution would duly have to contend with heightened acceptance in intellectual circles that rather than the model of early European states, states such as Iraq were sometimes far better suited in both their political and social fragmentation for certain types of federalism.

In fact, having already (albeit somewhat reluctantly)<sup>378</sup> agreed as a coalition of opposition forces under the auspices of the INC, that a new Iraq should be both democratic and federal,<sup>379</sup> the

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<sup>378</sup>The INC did not readily embrace the idea of federalism: Visser, *Basra, Failed Gulf State*

<sup>379</sup> Unlike the difficulty in translating democracy into Arabic, the concept of *al-ittihadiyah* has been used to denote federalism in Arabic, meaning "a system of government which unites separate states while allowing each to have a substantial degree of autonomy," *Almaany English-Arabic Dictionary*. However, the transliteration of *federaliyah* has also become frequent in Arabic vernacular more recently. The Kurds and major Shia political parties both included *Al-ittihadidyah* in their original proposals for the name of the new Iraqi State, the Kurdish as the only



initial disagreements circled around what *type* of federalism could best advance the interests of the respective parties. Most Shia and Kurdish politicians agreed that a centralized system had failed and had to be radically re-worked if the democratic process had any hope of taking root. However, a denial of a unitary state and acceptance of federalism did not guarantee the realization of group rights or representation, and thus did not in fact promise in and of itself to redress the grievances of Iraq's past or protect Iraq's diversity from a renewed attempt to centralize the state and homogenize its society. The devil would be in the details and it was the construction of compromises and institutions that blended together the desires of Iraq's various communities that would lay the groundwork for progress. The following sections analyze the two initial proposals, addressing the problems that made them ill-suited to the Iraqi case, and then the compromise that embedded the central state with the necessary power to protect against secessionist tendencies and empowered the periphery enough to correspondingly protect against the historical impetus toward despotic recentralization.

### **The Initial Kurdish Proposal: Confederalism**

The Kurds initially argued in favor of a federal system so decentralized and fragmented that it would amount to little more than a confederal alliance. As the most organized group, in some respects they had a distinct advantage. The Arab groups were divided among Shia and Sunni parties (with many Sunni parties choosing not to participate at all), and further split into different unorganized and uncertain coalitions predominately formed in exile and thus with varying and questionable degrees of political support. The PUK-KDP alliance by contrast shared a cohesive vision, popular electoral mandate, and established party decision-making structures that were determined to maintain the institutions that had granted them legitimate authority over three northern provinces and defacto military control over most of Kirkuk and majority-Kurdish areas in Diyala and Nineva. They also held a shared determination to extract the maximum authority possible through sovereign devolution for the KRG, effectively dividing responsibilities between the parties to this end.

Given this singularity of purpose, it was no surprise that they would be the first group to put forward a comprehensive platform. Submitted on 13 February, 2004 during negotiations over

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addition to the Republic of Iraq (Federal Republic of Iraq), and the Shia parties with the addition of Islamic. The term was dropped from the final name.

the TAL, it moved decisively away from the unilaterally-granted (and thus unilaterally-revoked) autonomy guarantees of the past,<sup>380</sup> opting instead for a very loose federalism. The Kurds recognized that in addition to autonomy, federal constituent entities (especially in post-modern systems) agree to give up certain rights in exchange for benefits, usually economic and security guarantees, without sacrificing the units' status claim to sovereign rights. While there is consequently still broad room for maneuver over how much to divide authority, merely obtaining the status of being a constitutionally-recognized federal unit would thus be a major step forward for Kurdish aspirations to institutionalize and legitimize their authority in Iraq and abroad.

The KRG thus called for a maximalist recognition of their rights through a system so decentralized and asymmetrical that it would amount to little more than a treaty on common defense between 2 equal national components. The Iraqi Government would recognize the KRG and all of its subsidiary institutions as the legitimate institutions of a self-governing region within the state of Iraq, to include all of the territory currently under control of the Kurdish forces. The federal government controlling all Arab-majority territory, would be limited to exclusive and agreed upon jurisdictions with all other powers reserved to the Region. The KRG would maintain under the command of the Kurdistan National Assembly (KNA) a "National Guard" that would only nominally be part of the Iraqi Army, as the KNA<sup>381</sup> would appoint its commanding officer and approve any deployment outside the Region. Likewise, the Iraqi National Army (INA) would not be deployed within the KRG unless approved by the KNA and Kurdistan Guards would be responsible for control of the KRG's international boundaries. The Region would also have complete ownership over oil, land, and other natural resources found in its jurisdiction, collecting revenue accordingly, except in the case of already existing oil fields. It would further have complete control to administer and collect taxes with Iraqi national taxes only active upon approval and the Region would be granted a "block," unregulated proportion of the Iraqi national budget based on population size.

The Kurdish proposal was far-reaching, resting on an assessment of the strength of alliances built with major Arab groups during the long opposition. Despite later disagreements, Kurdish leaders saw many in the Shia parties as natural allies in the fight against a return to extreme centralization. In particular, prominent Supreme Islamic Council of Iraq (SCIRI)

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<sup>380</sup> Interview with Peter Galbraith, Kurdish advisor during the constitutional process, August 10, 2011.

<sup>381</sup> O'Leary, McGarry, and Salih, 35.

members had gradually converted to a philosophy of federalization that would allow them to control the vast oil wealth found in their region and prevent the return of a strong, Sunni state that could use that oil wealth to suppress their aspirations. Since the majority of Iraqi oil wealth resided in Shia and Kurdish areas, a configuration of power that localized control of oil reserves would virtually ensure their protection from the traditionally dominant Sunni groups that resided in the resource-poor middle. While they did not recognize it as such, the Kurdish vision also offered to protect other minorities, including the Sunni Arabs, in a democratic system that they were now unlikely to control in perpetuity. By granting the regions a block of the national budget, it would ensure that a Shia government could not simply hoard Iraq's oil wealth to the detriment of its other communities.

However, those who supported the Kurdish vision of an extreme form of sovereign devolution commensurate with the division of Iraq into 3 statelets did not hold the answer to securing a stable and peaceful Iraq.<sup>382</sup> While the long-standing conflict between Kurds and Arabs indicated a pervasive division of Iraqi society, the political importance of this cultural and ethnic fact was not based in primordial tendencies, but was the result of the particularly problematic, over-centralized institutions of the previous Iraqi state. While this had deeply alienated the Kurds, the case for confederation in the rest of Iraq was not nearly as clear-cut. Besides an early nationalist flirt in Basra during the formation of the Iraqi state based almost entirely on the pre-existing identity of the Ottoman villayet system, there was very little historical indication that the Shi'a and Sunni Arabs in Iraq saw themselves as exclusive communities in need of their own political representation based on these broad sectarian groupings prior to the overthrow of Saddam.<sup>383</sup>

In fact, mainstream Arab thought largely indicated quite the opposite. In both cases, religious and secular scholars argued against the division of the Iraqi state, seeing a state of unity between its different sectarian communities as being the norm, rather than the exception.<sup>384</sup> While the Shia Arabs had long suffered under Saddam, there was undoubtedly a strong nationalist current that supported the Iraqi state historically, most often cited in regards to the large Shia participation against their co-religionists in Iran during the Iran-Iraq War. Rather than reify the growing sectarian and ethnic divisions, many not surprisingly called for the inviolability and

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<sup>382</sup> Galbraith, *ibid*; Biden and Gelb, "Unity through Autonomy"; Gelb, "Three State Solution"

<sup>383</sup> "Centralism and Unity"

<sup>384</sup> al-Din, *Mihnat al-ahwar wa-al-samt al-'arabi*

cohesion of all Iraqis as part of the Islamic *ummah*.<sup>385</sup> For a large number, the sectarian bend of post-war Iraqi politics was also the direct result of the state collapse and ensuing chaos, insecurity, and violence that came from a disorderly occupation, rather than a long and indicative historical process.<sup>386</sup> Already broken down from years of Ba'athist rule, Iraqi society's response to pressure from extremist groups seeking to ignite a sectarian war naturally fragmented along parochial lines in the search for personal security, but there was no reason to believe this indicated widespread desire for the end of an Iraqi central state identity and the division into bi- or tri-national blocks, which was virtually assured in the Kurdish proposal.

Most importantly though, the extreme division of Iraqi authority away from the center could serve to legitimize and reinforce the development of potentially destructive tendencies as witnessed in other failed states. While it would be foolhardy to completely embrace the idea that Iraqi society largely needed or wanted the return of a unitary state based on opinion polling in a time of extreme violence and civil war,<sup>387</sup> the fact that many Iraqis had developed a genuine sense of national belonging could not simply be wished away. By essentially removing any central control over the KRG, including Kirkuk, the ground for the division of Iraq into multiple secessionist states was a genuine fear. The threat of separatism or ethnic chauvinism was not unrealistic, for not every federal state has been created equal and some have in fact ended in abject failure. Of particular concern to the Iraqi case are studies showing that federal states that have bi-national (or even tri-national) configurations or a very small number of territorially based regions are more prone to secessionist conflicts and instability than their peers.<sup>388</sup> The idea that an Arabistan and a Kurdistan (or a Kurdistan, Sunnistan, and Shiastan) would last in perpetuity with their own armed forces and almost no policy congruence was not supported by available comparative evidence,<sup>389</sup> and thus it was clear that some sort of balancing factor was needed to allow for a degree of flexibility and the development of shifting inter-sectarian alliances.

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<sup>385</sup> al-Nasiri, Interview, 4.

<sup>386</sup> Dodge, "State Collapse and Rise"

<sup>387</sup> While Dodge does not go this far, he does suggest that the results of polling done in the midst of some of Iraq's worst post-war violence, which consistently demonstrated that around 64% of Iraqi wanted a strong, centralized, and unitary state, indicated a long-standing Iraqi preference that should be considered in developing new state institutions. This assertion is false, given the state of security in the country at the time and could be said universally about societies experiencing widespread institutional collapse. It is more surprising that the number was not significantly higher.

<sup>388</sup> Anderson, *Federalism*, 15.

<sup>389</sup> *ibid.*

The Kurdish proposal, while acknowledging this reality, maintained that the Kurds themselves could be granted far-reaching federal rights without the same being given to other Iraqis, an asymmetric-characteristic commonly found in other post-modern states. However, their proposal was so far-reaching in its retention of sovereign rights for the KRG it was difficult to see how it differed from independence and thus the negotiated destruction of the Iraqi state. The federal government would essentially only retain the right to issue a common currency, making the union more monetary than political, and rendering the Iraqi state largely impotent in terms of power projection over a significant portion of its most vulnerable territory.

### **The Revival of Centralism in the Pachachi Plan**

The initial confidence of the Kurdish authorities in their alliance with prominent Shia groups would be summarily dashed by increasingly strong opposition from both secular Arab liberals and some Shi'a religious parties to their confederal plan, leading to growing momentum behind a very different form of federalism known generally as the "Pachachi Plan."<sup>390</sup> As the clear demographic superiority of the Shia evolved, the natural alliance they had found with the Kurds in exile began to wane, drawing some closer instead to Sunni liberal nationalist ideas. Stronger Shi'a parties could now envision themselves atop a more unified, centralized, and democratic Iraq as electoral gains strengthened their grip on Baghdad. Emboldened and recognizing themselves as the most likely candidates for the helm of the central state, Shi'a groups that had previously semi-supported a decentralized system increasingly connected themselves to the need for a stronger Iraqi state that could continue to play a prominent role in the region.<sup>391</sup>

This evolution was aided by the chaos and bloody sectarian war that gripped the post-Ba'athist state. The surprising rise of Muqtada Al-Sadr, a firebrand son of the assassinated Grand Ayatollah Al-Sadr, on a populist, nationalist message forced several of the major Shia political parties, most notably SCIRI (renamed ISCI) and Da'wa to reformulate earlier political calculations and move more decisively nationalistic in rhetoric. Declarations by the revered Ayatollah Al-Sistani that Iraq remain unitary and the subsequent defeat of the strongest Basrawi

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<sup>390</sup>The "Pachachi Plan" was nick-named after Adnan Pachachi, a secular Sunni Arab on the Iraqi Governing Council who initially propagated it along with other Arab liberals. A very similar draft of this proposal was published in *Asharq Alawsat*, 14 February, 2004.

<sup>391</sup> Rubin, *ibid*.

advocates for a Shi'a federal region in the 2005 elections,<sup>392</sup> also dampened some of the initial enthusiasm for a much more decentralized Iraq and opened the door for a more centralized version of Iraqi federalism to make significant inroads in constitutional negotiations.

The position of this developing “Pachachi” coalition,<sup>393</sup> was deeply informed by the American federal tradition of a strongly centralized, integrationist, and symmetrical arrangement that would jettison sectarian identities in favor of a national, liberal Iraqi identity. Just as the KRG’s proposal dubbed its parliament a “national assembly,” and in so doing revealed a profoundly confederal bias, so too did the Pachachi plan refer to the Iraqi government not as a federal government, but as a “national” and “central” government.<sup>394</sup>

Not surprisingly, on all of the main points on which federations can differ, this plan opposed the KRG proposal. The “national” government would retain exclusive jurisdiction and competency to legislate and enforce law on all but the barest of local matters, “subordinating” the KRG to its sovereignty. It would control a national army, have sole competency to engage in foreign policy, determine monetary and fiscal policy (including taxation and presumably expenditures), and would own and operate all of the country’s natural resources.<sup>395</sup> A simple majority would be needed to enact legislation enforceable throughout the state, and the existing institutions of the KRG in police, security, and judicial matters would be subjugated to decisions made at the national level.<sup>396</sup> This would essentially dismantle pre-existing Kurdish institutions and seek to recreate in Iraq a contemporary American-style, symmetrical federation with an even more pre-eminent national government.<sup>397</sup>

Like the Kurdish vision, this proposal was not conducive to the healthy establishment of an inclusive, democratic Iraq, providing no guarantees for minority rights or hope of Kurdish buy-in. At its extreme, scholars like Dawisha and Dawisha<sup>398</sup> even envisioned redrawing the provincial map of the Iraqi state, such that most of the provinces would have an artificially doctored split between religious and ethnic groups. The Kurds would no longer have their own

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<sup>392</sup>Katzman, “Iraq: Elections, Government,” 72-74.

<sup>393</sup>O’Leary, “Power-sharing”; Galbraith, *End of Iraq*

<sup>394</sup>This discrepancy is highlighted by O’Leary, *ibid.* 2007.

<sup>395</sup> *Ibid.*

<sup>396</sup> Interview with Peter Galbraith, August 15, 2011, Washington, DC.

<sup>397</sup>As opposed to the original division of authority in the American federal system, the broadening interpretation of the interstate commerce clause in the Constitution by the US Supreme Court, alongside the evolution of a much more cohesive, mobile population has greatly strengthened the federal government vis-à-vis the states. It was the contemporary version of American federal power that CPA advisers sought to recreate in Iraq.

<sup>398</sup>Dawisha and Dawisha “How to Build”

provinces and would be “forced” into compromises with other groups to achieve representation. In fact, the division of Iraq’s 18 provinces into a non-ethnicized American integrationist model was unfeasible even with long crescent-shaped provinces running from south to north. The plan would have left several provinces predominately Shi’a, in effect only dividing up the Sunni and Kurdish minorities, stripping them of any institutionalized base of authority, and promoting intra-ethnic competition between them while leaving the majority Shi’a ascendant.<sup>399</sup> Rather than altering the basic sectarian calculus of the state, it would merely have promoted one group to the exclusion of others. Similar administrative maneuvering had in fact already proved entirely unsuccessful in places like the USSR and Yugoslavia, whose experiences after the removal of the coercive boot of totalitarianism indicated the likelihood of an immediate resurgence of ethnic identities without heavy coercive suppression.<sup>400</sup>

The proposal for a centralized, unitary, and symmetrical federalism was thus both unrealistic and dangerous to the future stability of the Iraqi state for one main reason: the very real division of social and territorial power between Iraq’s various sects. Gerry-mandering provincial borders or ignoring the desired association of people across super-imposed provincial boundaries could not deny the origin of the Iraqi state, rooted not in singular united people sharing a common language (as in the US). The proposal was also grounded in an ahistorical understanding of the American federation’s provision of minority guarantees and foundational acknowledgment of diverse social loyalties. It willfully ignored the fact that even America’s founders could not have suggested the re-drawing of state boundaries to weaken the citizenry’s affiliations to them without raising serious popular objections to the union.<sup>401</sup> Indeed, the idea that it could be done in Iraq merely created dangerous roadblocks to the constitutional drafting process, including Sistani’s famous objection to the stipulation that a 2/3 negative vote in any 3 Iraqi provinces would fail to ratify the Constitution as an unacceptable Kurdish veto comparable to allowing blacks in America to overturn the popular vote of the American people.<sup>402</sup> In fact, the US federation was built in infancy around just such a system designed to protect the identity of its federal units from unwanted federal or majoritarian abuse, both through the electoral-college and an upper Senate with equal representation regardless of state size. In a state divided on more long-standing and

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<sup>399</sup> O’Leary, “How to Get Out”

<sup>400</sup> Ibid. Many scholars of federalism have made this point. See also, Anderson; Anderson and Stansfield.

<sup>401</sup> O’Leary, “Power-sharing”

<sup>402</sup> Bremmer, *My Year*, 304.

cross-provincial sources of identity like Iraq, some recognition and protection of the identities that mattered in its particular society (in this case ethno-sectarian rather than federal units) would have to be legitimized if the system was going to be able to legitimately seek to incorporate and represent these affiliations rather than contest them.

The Pachachi and Dawishas Plan would have thus denied Iraq's minority even these basic protections found in more ethnically-homogenous early federations. Providing no institutionalization of guarantees to Iraq's long-battered minorities, the proposal was dead on arrival. It sought to give the Kurds much less than they had been willing to accept historically from Iraqi dictators, making the choice of exit through secession and conflict more appealing than inclusion. In essentially re-centralizing all power in a 'national' government with only token recognition of Kurdish participation and a concerted effort in fact to destroy Kurdish political identity, it was hardly distinguishable from the totalitarian regimes of the past in terms of Kurdish socio-cultural aspirations. If Iraq was to have a future distinct from this tragic history or disintegration, another path would clearly need to be found between these two extremes.

### **Negotiating a Balanced, Post-Modern Vision for Iraqi Federalism**

From this brief discussion of the first major proposals for Iraq's new federalism, it is clear that the end result (contrary to the claims of its critics) would give neither the central government's main detractors or supporters everything they had hoped.<sup>403</sup> While it was true that in order to break with the destructive centralization of its past, the new Iraqi state would at minimum have to recognize some independent social and institutional authority for the KRG; the choice in most federal arrangements (and certainly in Iraq) was not simply between complete unity or slow disintegration. In fact, federalism demonstrably functions best as a unifying and effective form of government when it reflects pre-existing social or political cleavages that render alternative and more efficient forms of unitary government unworkable, being almost unanimously deployed in contemporary states to avoid the sort of overt coercion necessary to hold the Iraqi state together in the past. It achieves minority support by granting legitimacy and authority to their defacto power, but also supports majority ascendancy through acknowledgment

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<sup>403</sup>The most vocal critics assert that the Kurds, through their superior unity, organization, and leadership drafted the Iraqi Constitution in pursuit of their own sectarian interests.



of their claim to territories they would otherwise be unable to secure through force.<sup>404</sup> If majoritarian groups believe they can hold territory without making concessions on sovereignty, and could thus reap the benefits of territorial aggrandizement without cost, federalism would be unnecessary. Iraq's brutal history shows this is not the case.

Federalism is thus far from inherently disintegrating. It can bind different social groups together by recognizing their difference, seeking not to destroy these identities, but to successfully incorporate them into a common mission as was the case in the post-colonial states of Canada (due to religious-linguistic cleavages), and the United States and Australia (due to pre-existing colonial political cleavages).<sup>405</sup> However, these cleavages can vary in strength, making further devolution necessary to achieve minority support especially where cleavages are based in deeply held convictions about a person's ascriptive identity, as is the case in later post-modern federalist states. This was the reality in post-Saddam Iraq which possessed both obvious ethno-linguistic cleavages and historical political cleavages, first from the Ottoman vilayet system and later from the UN-instituted autonomy.

While these facts could not be wished away through vague appeals to abstract notions of liberal individualism, especially in light of the clear evidence provided previously of the enduring strength of such ties and the historical memory of Iraq's tragic suppression of its Kurdish minority,<sup>406</sup> the very real attachment for a majority of Iraqis to a strong national character and the potential for disintegration had also to be considered. Post-modern federalism while addressing concerns of a divided society for representation and protecting against majoritarian abuses, had also to weigh against the potential for secession. These competing visions would require a flexible, representative, and negotiated solution that could both avoid the "danger of devolving the violent struggle for supremacy" through radical decentralization,<sup>407</sup> while still alleviating the Kurdish concern with being forcibly reintegrated and dominated by a political order

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<sup>404</sup>Riker, "Federalism," 238.

<sup>405</sup>Most commonly found in the literature as federal states reflecting federal societies, Gibbons introduces an appropriate footnote that political cleavages can also be solvent: Gibbins, "Federal Societies, Institutions," 17-19.

<sup>406</sup>The attempt in some Shi'a religious circles to argue against the artificial division of the Muslim community, given resistance to any inclusion of religious notions (especially amongst Kurds) in the Constitution and the religious heterogeneity of the polity, Visser *Basra*, 168.

<sup>407</sup>Dodge argues that this would be the case with the separation of Iraq into 3 states, but also implies that devolution for Kurds would run the same risk. The argument is contradictory to his earlier presumptions about the evolution of ethnic political identity. In essence, he argues that in order to overcome warfare in other parts of Iraq, credible and unitary state institutions must be built, but neglects to consider the most clear and easy path to constructing effective state institutions, *ibid*.

unrepresentative of their unique identity. From the basis of two diametrically opposed visions for the future of Iraqi federalism, an agreement had to be found that could lay the foundation for the establishment of common ground between the various communities that could strengthen the central state against rising disintegrating tendencies without overburdening it with responsibilities beyond its capacity to fulfill.

The mutual need to move the process forward would consequently force each group to make concessions ancillary to their core interests. This process was characterized by compromise, with horse-trading amongst the groups forcing a healthy prioritization of interests. Contrary to its critics assertions then, the Iraqi Constitution was neither a Kurdish or foreign invention.<sup>408</sup> The two original positions – one strongly federal in a classic sense, the other strongly confederal, would be merged through repeated rounds of negotiation to form a post-modern federal system commonly (and successfully) found in states with similar demographic and historical characteristics, with unique protections for Iraqi-specific considerations and constraints.<sup>409</sup>

One of the largest hurdles in the process would be resolving questions of symmetry that went to the heart of the bi/tri-national secessionist concerns. While the Kurds were willing from the outset to allow the rest of the Iraqi state to remain centralized as long as they were granted supremacy on their own matters, the early objection of the traditionally politically-quietest Shia cleric, Ayatollah al-Sistani, threw a necessary wrench into those plans. In repeated statements, Sistani made clear that it would be unacceptable for the state to grant rights to a particular group not granted to other citizens, a system used effectively in other post-modern states to alleviate differing desires amongst communities. This imposed a conundrum on the resolution of federalist rights, whereby the Kurdish solution would need to be accepted by skeptical Shi'a and oppositional Sunni Arabs.

While it is commonly cited that the Kurds were the biggest roadblocks to compromise on this issue, in reality, Shi'a leaders were also subject to divisions amongst themselves over how far decentralization should progress. The coalition Sistani had cobbled together between ISCI,

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<sup>408</sup> Insider accounts note that the other main Kurdish figure and later Iraqi President Talabani at one point in the negotiations was “tricked” into signing a document that would have seriously undermined the Kurdish position. These accounts are accurate. They are a reflection of the early Kurdish decision to divide priorities. The role of women and Islam would be important in this regard, along with the centralization of authority in the post of Prime Minister, which was ultimately likely to remain in Shi'a hands.

<sup>409</sup> The growing sectarian violence in large part drove this resolution. The Kurds in particular pushed for progress on federalist issues in exchange for compromises on religious rights and other central Shia considerations.

Da'wa, Fadhila, and smaller Shi'a groups was not ideologically-united. Just as they feared renewed Sunni hegemony, they also saw one another as potential rivals, subject to the deep mistrust that existed both between *and* within Iraq's respective sectarian communities about investing any one party with control over their affairs. Some of the parties were rooted in strategic geographical enclaves that rendered them sympathetic to enhanced local flexibility, not just from a Sunni-led Baghdad government, but even from one that shared their broader sectarian affiliation. In fact, there were signs that a solid stream of support amongst the Shi'a population for the federalist cause remained throughout the negotiation process,<sup>410</sup> reflecting the deep cleavages in inter-societal trust that made Iraq in particular need of institutional safeguards to protect against the sort of overweening centralism that had characterized its past.

A proposal by CPA advisors to lessen Arab concerns over Kurdish irredentism consequently broke the logjam.<sup>411</sup> The proposal granted any province or coalition of provinces up to 3 the right to form a Region, obtaining the same rights as the KRG. The limit on the number of provinces would effectively prevent an outright break-up into a Shi'astan, Kurdistan, and Sunnistan, addressing centralists' legitimate concern with the instability of a bi or tri-national state. This would place the inherent risk of destabilizing ethnic parties into a positive arena, where the fragmentation of political parties along sub-state and minority nationalist lines has been a common feature of successful post-modern federal regimes in a balanced institutional context.<sup>412</sup> Rooted in long-term and limited electoral processes, through this deal, Iraq is in fact much less asymmetrical than many other post-modern states that have done quite well at balancing the associated risks.<sup>413</sup>

The compromise also allowed for the clear asymmetry of the state to be maintained for the foreseeable future, preserving the current Kurdish rights, without cutting off the possibility that Iraqis might later democratically choose to pursue a more symmetrical or uniformly decentralized version of federalism. Such an inclusive state can not only avoid suppressing the deeply held

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<sup>410</sup>Visser, *Basra*, 173. Even Sistani, whose proclamations were often evidenced as being contrary to Kurdish demands was "remarkably solicitous of the interests and rights of minority religions and nationalities," O'Leary, *How to Get Out*, 14.

<sup>411</sup> Although many critics have opposed the idea that the Constitution was in fact a compromise, this dissertation is not alone in classifying it as such. Most of those that participated in the actual negotiations recognize that the end result was not a Kurdish invention, see Galbraith, interviews, *ibid.* and O'Leary, Salih, McGarry, *ibid.* These authors also classify the Constitution as a compromise between the Kurdish desire for confederalism and the original liberal federal plan presented by the Occupation advisers and secular Arabs.

<sup>412</sup> Marchildon, "Postmodern Federalism," 448; Ishiyama, *Comparative Politics*, provides statistical evidence

<sup>413</sup> Anderson, "Institutional Basis of Secessionist Politics"; McGarry 'Asymmetrical Federalism and Plurinational'

beliefs of its people, but in doing so can give voice to its diversity and thus avoid conflict or the forceful shove of dissenters toward reliance on an ‘exit’ option.<sup>414</sup> While the final Constitution maintained asymmetry through the admixture of Regions and provinces, it was thus balanced by the opt-in inclusion of all Iraq’s provinces. The KRG would not enjoy special privileges, but it would also be allowed to maintain a large degree of its traditional freedom. By extending the right to all Iraqis, it had the added benefit of alleviating fears among Arab Iraqi as well that they could be forcibly dominated from Baghdad by a regime hostile to their interests through a one-time relinquishment of their rights. This fluidity allows for the evolution and adaptation of state institutions to shifting interests, a hallmark of successful post-modern federations, avoiding the typical consociational issue with adapting to inevitable demographic and interest changes. It also avoided implementing a final resolution during a brutal civil war, where patterns of behavior and interest perception were still mired in decades of authoritarian oppression, installing the state with a crucial fluidity that can evolve with its society under democratic institutions.

In order to secure these guarantees the Kurds duly relinquished some of their more problematic demands.<sup>415</sup> Unlike in their initial calculus, the federal Iraqi government would take precedence on fiscal matters, with the caveat that they be granted discretion on how to apportion their share of the national budget and whether to impose national level taxes; a solution with precedence in other post-modern federalist states at effectively addressing concerns for economic and cultural autonomy without hollowing out the pivotal fiscal apparatus of the central state.<sup>416</sup> They would also acknowledge federal primacy in defense and foreign policy, with representation inside a united Iraqi military command, Iraqi embassies and the Iraqi Foreign Ministry<sup>417</sup> thereby securing their representation through central coordination and inter-state federal guarantees.<sup>418</sup> Finally, they agreed to share and coordinate responsibilities between the central and regional governments in developing Iraq’s all-important oil industry and critically conceded some of their demands regarding the composition of regional boundaries, most notably over Kirkuk. A repeated

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<sup>414</sup>This matrix of choices given diversity from Hirschmann, “Exit, Voice, and Cooperation.” In relation to ethnic parties: Lijphart, *Democracy in Plural Societies*; Cohen, “Proportional versus Majoritarian Ethnic”

<sup>415</sup>Feldman and Martinez, *Constitutional Politics*, 896.

<sup>416</sup>Heisler and Peters, “Scarcity and Management,” 332; Senelle, *Reform of Belgian State*

<sup>417</sup>Chandrasekaran, *Imperial Life in Emerald*, 242-243.

<sup>418</sup>While the Shi’a history with federalist notions is not nearly as deep as the Kurdish, evidence suggests prominent Shi’a leaders dating to the 1930s flirted with the idea of devolution.

breaking point for past agreements between the Kurds and Baghdad, this process would legitimize any final decision through a consensual and negotiated electoral procedure.<sup>419</sup>

These would not be the only compromises embedded in the Iraqi Constitution, which was in fact riddled with trade-offs, though they would be some of the most important. While colored by the fact that the main parties that negotiated its drafting were “outsiders,” it effectively addressed the demons of Iraq's past without trampling on the hope for its future.<sup>420</sup> As Calhoun once argued,<sup>421</sup> the key question a state must answer at its founding is best determined by the evil it is designed to prevent. In Iraq's case, resisting a return to despotic and destructive authoritarianism, international aggression, and bouts of genocidal violence against its citizenry was the clear answer. The post-modern federal bargain between its constituent units was consequently the best possible answer, breaking the state's defining pattern of insecurity by establishing a basis through which *all* its respective groups could maintain significant authority over their own affairs and resist the despotic encroachment from a renewed central government.

Thus, while federalism is undeniably inefficient, subject to stagnation and in need of ongoing compromise, its performance should not be compared against idealistic alternatives. A unitary Iraq has already shown itself subject to an insurmountable, incredibly destructive and violent security dilemma. The new Iraq jettisons this model for an admittedly messier, but more hopeful future. Rather than leave the Kurds hopelessly and permanently in contest with the state, it develops a means to incorporate them into its decision-making apparatus and thus allows the state to capitalize on the political, social, and cultural capital of the Kurdish leadership. It is pragmatic, rather than ideal. Conflict, being endemic to all societies, is managed through state institutions designed to establish rules, mitigate violence, and create social order between actually existing rival points of authority.

Indeed, through this process a different pattern of behavior between the Kurds and Baghdad was already beginning to emerge, with Kurds repeatedly sending soldiers to Baghdad and other hotspots in order to bolster the struggling INA. The first active units of the new national army were in fact Kurdish-commanded and largely Kurdish in origin. Thus, while none of the

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<sup>419</sup>The compromise was a profound concession. In exchange for acknowledgment that Islam would be a (but not the) source of legislation in the new Iraq, the Kurds argued strongly for a secular state, with results of a 2007 survey revealing they are broadly secular. Ingleheart et al. <<<http://www.worldvaluessurvey.org/>>>.

<sup>420</sup>Marr, *Modern History of Iraq*, 44 uses this description of “outsiders” versus “insiders.”

<sup>421</sup>Read, “John Calhoun's Federalism,” 246.

Iraqi groups would get everything they desired in the new Constitution, the Kurdish redlines<sup>422</sup> were met without trampling on the aspects of unity necessary to maintain the future of the Iraqi state. The end result was admittedly a system of federalism with great potential for decentralization, but open to the desire for some to maintain a tightly integrated centralism in perpetuity.

Democratic federations have indeed offered hope to war-plagued societies when they reflect pre-existing federal *societies* with a profound need to accommodate divergent societal interests.<sup>423</sup> The basis for comparable states has never been the “national dream” of American folklore, but rather a “national deal” that bonds the community together by a shared commitment to its institutions<sup>424</sup> and recognizes the sort of divided society that early federations did not possess.<sup>425</sup> Iraq thus shares common ancestry with other post-modern states, founded in negotiated bargains where “the union of previously separate political entities, [is] prompted by “narrow considerations like economic development and defence.”<sup>426</sup> This logic is fundamentally different from the impetus that led post-colonial states in much of the developing world to view difference as something to be overcome. This “idea of supreme power” while compelling, was as Krasner contends “irrelevant in practice for many of these states.”<sup>427</sup> Indeed, the record of federal states reveals a gradual weakening of parochial interests over time<sup>428</sup> that offers more hope at binding divergent societies together than the coerced alternative that undergirded previous Iraqi attempts to build a unitary state.

Its acceptance by the vast majority of Iraqis in a countrywide plebiscite is often mistakenly disparaged then because of the messy negotiations, the unfinished business it deferred, and the absence of Sunni participation. The new Iraqi system, by protecting the right of its provinces to create Regions, ensures precaution against potentially anti-democratic forces by imbuing enough strength in its constituent parts to resist federal encroachment. This is a feat simple decentralization could not hope to engender given Iraq's historical proclivity toward

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<sup>422</sup> O'Leary, *How to Get Out*

<sup>423</sup> Gibbins, “Federal Societies, Institutions,” 16-18; In tracing the roots of federalism in Canada, the importance of divergent social groups is held paramount, while in the US/Australia, the creation of a federal system reflected institutionalised political interests. The growing popularity of federalism in the developed world to address conflicts is undeniable.

<sup>424</sup> Distinction made by Sheppard and Valpy, *National Deal*

<sup>425</sup> Gibbins *ibid*; The argument that the American-Australian model poses the weakest ethnic fissures is tautological.

<sup>426</sup> Covell, “Federalization and Federalism”

<sup>427</sup> Krasner, “Sovereignty,” 21.

<sup>428</sup> Gibbins “Federal Societies,” 20.

despotism. By recognizing strong Regions with control over both local policing and natural resource development (purse strings), Iraqi federalism allows its institution to remain close enough to the liberty of the people to ensure it.<sup>429</sup> This should be the primary benchmark for the Iraqi state's potential for success, not its mere survival. The Iraqi state is only worth preserving after all, if it can begin to protect and serve its people, and live in peace with the international community and its neighbors through the provision of political order. The federal bargain that emerged in the 2005 Iraqi Constitution offers the best hope of achieving that reality.

However, this is not to deny that divided states do not face serious challenges even under federalism, for it is hardly a panacea. Federal states with divided societies, where citizens' attachments are stronger to their member states instead of the wider political community or "where interdependencies of interests are...limited," often require greater flexibility in their institutions with heightened devolution so that member states can practice an effective veto over encroachment. This is especially true of democracies where the majority-minority coalition is unlikely to change due to its ingrained difference marked by ethnic, religious or other cleavages, for if the majority "never has to worry about finding itself in the minority...[it] has no incentive to treat minorities justly."<sup>430</sup> Iraq with its overwhelming Shi'a majority is subject to this consideration, requiring the construction of consociational checks in order to protect against despotism, including but not limited to the need for coalition governments, some form of veto over majoritarian rule, and autonomy for individual segments to run internal affairs.<sup>431</sup> The Iraqi Constitution does so predominately by requiring a super-majority to alter existing institutional constraints and proportional representation in parliament which requires the inclusion of minority parties in order to form a government for the foreseeable future.<sup>432</sup>

By providing Regions with special rights then, it does not unduly burden the majority and is not essentially different than other post-modern federal regimes that have recognized the normal workings of a majoritarian democracy inherently threaten minority interests without due consideration.<sup>433</sup> It does not deny the importance of individual rights, but seeks to look beyond

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<sup>429</sup> McNamara, "Thomas Jefferson's Enlightenment Idea," 213-214.

<sup>430</sup> Read, "John Calhoun's Federalism," 247.

<sup>431</sup> Lijphart, *Democracies in Plural Societies*

<sup>432</sup> Without risking Hume's fear for the instability of small federal republics, by establishing a protection for minorities or majorities to govern their own affairs without forcing them to take over doing so at a particularly precarious transitional time: Jordan and Yenor, "Federalism and David Hume's"

<sup>433</sup> Majeed, "India," 504.

such narrow definitions to protect the cooperative core of a federalist state as an exercise between communities with diverse social affiliation<sup>434</sup> and has been successfully used as such in post-conflict societies with much stronger historical, cultural, and philosophical attachment to individual rights like Northern Ireland.

Consequently, beyond the necessity of recognizing and incorporating obvious social cleavages and responding to the very real desires of its citizenry, the compromises embedded in the Iraqi federal system provide a volatile situation with multiple safety valves. Rather than a monolith, it is designed as in other ethnically diverse societies to encourage (rather than force) a move away from traditional cleavages by introducing a second tier of political decision-making and positions of power at the regional level that encourages the expression of class-based politics.<sup>435</sup> This process is already underway in fact, with new cleavages emerging within the Kurdish political system, encouraging the KRG's political liberalization and broadening the political discourse beyond Kurdish nationalism. In particular, the rise of the Gorran Movement (Change in Kurdish), a viable opposition to the dominance of the two party duopoly, has seen the Kurdish political scene tilt more to domestic issues of corruption, inefficiency, and inequality. The fact that the KRG's institutions hold real power now is likely to encourage this inter-ethnic competition further.

These sorts of trends are indeed likely to deepen in the future if the Iraqi federal system is allowed to mature and the regions expand, providing new alignments of interests and deepening cross-cutting cleavages elsewhere as well. Where the Constitution does not meet short-term expectations, it provides enough flexibility then to offer all hope by its very democratic and post-modern federalist nature. The successful mediation of divergent interests in the construction of the Constitution denies the argument that Iraq is un-viable due to long-standing ethnic and sectarian conflicts,<sup>436</sup> revealing instead that Iraq has in fact been unstable, externally and internally violent due to an extreme centralization that heightened identity conflicts *and* violent competition over its central resources.<sup>437</sup> While Iraq's past undeniably reveals a division between Kurds and Arabs,<sup>438</sup> many of Iraq's sectarian problems are more recent innovations of Ba'athist attempts to cling to power. Rather than deny the need for decentralization, this fact actually

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<sup>434</sup>Sheth, *Minority Identities and Nation-State*

<sup>435</sup>Petter, *Federalism and Myth*

<sup>436</sup>Karadaghi, "Minimizing Ethnic Tensions"

<sup>437</sup>Tripp, *History of Iraq*; Karsh and Rautsi, *Saddam Hussein*, 3.

<sup>438</sup>Dodge, "State Collapse"



bolsters the idea that changing the logic of the state is critical to maintaining Iraq's democracy for 2 main reasons. First, that the impetus toward exploiting ethnic cleavages to maintain coercive power is reduced and groups are encouraged,<sup>439</sup> as the Sunni have recently shown is possible, to create ideologies of broad appeal or face electoral defeat. And second, that a decentralized regime significantly reduces the most extreme and damaging thrusts of the conflict to control the vast resources of the central state bequeathed by Iraq's abundant natural resources, based not on ethnic affiliation but on the very real resource-curse that has led to disappointing state-building throughout the developing world.

A decentralized, post-modern federalism offers not only a solution to the Kurdish-Arab ethnic conflict then, but also the overcentralization that has driven groups to engage in near constant warfare over the state's institutions. In fact, as Krasner has shown, the behavior of the Iraqi state “placed constraints on the possibilities for the future. The preferences and capabilities of political actors cannot be treated as exogenous variables: they can only be understood within the context of a given set of institutional arrangements.”<sup>440</sup> Only a revolution then of Iraq's institutions could break the horrific pattern of its past.<sup>441</sup> Challenging the traditional view of the modern state, the 2004 Iraqi Constitution sets about instituting this revolution by delegating considerable sovereign rights, effectively recognizing Horowitz's dictum that

“if the major malaise of the ethnically dispersed polity is inertia and lack of direction, that of the centralized polity is constant tension and an overheated political system. In general, the room for manoeuvring without jeopardizing political stability is seriously limited. The neutrality of the national regime, often an asset in ethnically dispersed systems at times of stress, is constantly under challenge in centralized systems.”<sup>442</sup>

While there is no debate that the new Iraqi system can be unwieldy, the goal has been to transfer conflict between the divergent societal interests of its population from violent conflict to

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<sup>439</sup>The sectarianism that blossomed after the overthrow of Saddam was not surprising from the experience of other post-dictatorial societies, the result of the collapse of the only ideology and system allowed to represent a national politics for decades, Sidahmed, “Islamism, Nationalism, and Sectarianism” 79.

<sup>440</sup>Krasner, “Sovereignty,” 239

<sup>441</sup>The term revolution is highly debated, with definitions like Theda Skocpol's typically taking prominence, *Social Revolutions in Modern World*. Others like Marr have applied this to the Iraqi case, “Iraq's Identity Crisis”

<sup>442</sup>Horowitz, “Three Dimensions of Ethnic,” 239.

parliamentary debates.<sup>443</sup> With federal institutions enshrined in its Constitution, Iraq takes a big step away from its past, but these paper promises also require a supporting ethos if they are to break with the totalitarian bend of Iraq's long and brutal history. The lack of such ethos requires strong safeguards based in vertical federalism to prevent the destruction of its democratic character or a return to the tempting allure of the Leviathan's siren call.

### **Building the State: The Importance of the Covenant**

*“Too often federalism is treated as simply an administrative principle or, less frequently, as a merely juridical one. The relatively few men who look...with greater breadth of understanding recognize federalism as a political principle....In the last analysis, however, federalism is more than simply a political principle...it is also a fundamental principle of social organization that has to do with the relationships among individuals and families as well as governments and polities.”<sup>444</sup>*

In retrospect, the end solution to the Iraqi federal agreement may seem clear. Federalist agreements have been touted by contemporary theorists from a broad range of disciplines as the best hope for many states suffering from extreme group-based identity conflicts. Iraq's fissures, while re-organized and brought into the open for discussion, have been ever-present, part of the initial contestation of forces that had been encountered years before by the British. Subjugated, brutalized, and suppressed for over 100 years, the basic divisions of Iraqi society had remained relatively constant. At the moment when their dream of independence seemed most at hand, the Kurds chose not to move for independence, but instead negotiated inclusion in a new type of Iraqi state. The Kurdish decision to “buy-in” to the Iraqi state-building process fundamentally rested upon the perceived commitment, backed by the military force of the United States-led Coalition Forces, to a process by which differences would be adjudicated between themselves and the central state through democratic, just political processes.<sup>445</sup>

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<sup>443</sup>Throughout the negotiations, Iraqi leaders recognized that the potential benefits of a broad-based, inclusive Iraqi government in terms of conflict management would more than outweigh the real potential costs in efficiency, quotes in Shanker and Meyers, “US Presses Iraqi Leaders”

<sup>444</sup>Elazar *Federal Polity*, 3.

<sup>445</sup>Kurds also rightfully feared their ability to survive a unilateral declaration against hostile international and regional forces. The US-led coalition could also not afford to forcibly re-integrate the KRG: Phillips *Losing Iraq*, 114-120.

While far from perfect, the process through which the Iraqi Constitution would be constructed was largely broad-based and inclusive, a non-coercive assessment of diverse societal interests.<sup>446</sup> Through the extension of Kurdish demands for local sovereignty to all Iraq's provinces, the interests of even the rejectionist Sunni minority in a democratic Iraq were protected.<sup>447</sup> Unlike the initial plan for a hand-picked ethnically-balanced group of exiles to determine its future, the Constitution was negotiated based upon the actual political preferences of the Iraqi electorate. Its ratification met the standard not only of a majority of Iraq's citizens (as had originally been planned), but a remarkable super-majority.<sup>448</sup> This foundational change in process would have profound implications for its long term potential to resolve the legacy of inter-ethnic warfare that had characterized its past. Most notably, for the first time, the new Iraq

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<sup>446</sup>Detractors mainly point to the absence of Sunni participation whose members were mostly appointed and largely ignored in the drafting. This complaint seems to hold sway with critics, Haysom, "Forging an Inclusive," 145. But a new picture has unsurprisingly begun to develop. As a minority in a state not governed by coercion, Sunni leaders are beginning to develop a broad ideologically-based party that can engage in coalitions and take advantage of the provisions for decentralization of power and control. Major Sunni groups participated in Allawi's coalition during the 2010 elections and 3 of their 4 provinces have flirted with the idea of creating their own Kurdish-like region. This is a marked evolution for the Sunni leadership, recognizing that the Kurdish provisions also ensure that they will receive a portion of the overall federal budget in accordance with their population size to be spent at their discretion, rather than the Shia-led majoritarian regime in Baghdad. This eliminates some of the concerns of the Sunni population that their removal from power will deny them access or control over valuable resources. This evolution is clearly demonstrated more broadly in opinion polling dating back to 2007, where only a slim majority of Iraqis continued to support a unified, centralized state of Iraq over either the division of the state or federalization, down from the overwhelming 79% that had favored centralization in the same poll in 2004 (BBC poll results: <<  
[<http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/19\\_03\\_07\\_iraqpollnew.pdf>>](http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/19_03_07_iraqpollnew.pdf))

<sup>447</sup> Once a large political contingent moved away from the rejectionist, extremists groups like al-Qaeda, Sunnis have in fact found much in the Constitution to protect their interests, this will be addressed in full in Chapter 6.

<sup>448</sup> The Sunnis, like the Kurds, had the opportunity to veto the agreement by mustering a two-thirds majority "no" vote in three of the four provinces where they represented a preponderance of the population, but were ultimately unable to do so in the four provinces where they represented a majority: Anbar, Ninevah, Salahaddin, and Diyala. In fact, the Sunnis turned out in considerable numbers for the referendum. Yet, even if the idea that Sunni Arabs represented a singular political community vis-à-vis could be sustained in light of this failure, it was unlikely given continued Sunni adherence at the time to the coercive governing mentality of the past that they would have been ready to accept any fair, representative role for the Shia and Kurds in the future governance of the country (including American-style federalism). O'Leary, "Power-sharing," 113-114 makes this point very clearly. As he notes, the negotiations that took place at President Barzani's Baghdad compound which led to the resolution of the most difficult issues dividing the respective groups were riddled with Sunni grand-standing and threats that wreaked of their unwillingness to engage in any serious attempt to reconstruct a democratic Iraq. Their chief negotiator, Salih al-Mutlak said as much. Their behavior was described as behaving as though the Shia Arabs and Kurds were merely special interest groups in a state that ultimately belonged and would continue to belong to the Sunni. In fact, many heavily favored dictatorship as the "best form of government" for a future Iraq (BBC polls from 2004-2007 <  
[<http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/19\\_03\\_07\\_iraqpollnew.pdf>](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/19_03_07_iraqpollnew.pdf)) viewing de-Baathification as synonymous with de-Sunnification (Ajami, "Blind Liberation")

would be built upon a covenant between its various people and the state,<sup>449</sup> formed with the intention of representing the interests of all and setting forth a mechanism for the resolution of conflicts between or amongst them. It embodied a set of foundational principles that were deemed legitimate, offering each more than they perceived it would take from them and thus subject to a logic that established voluntary unions elsewhere.<sup>450</sup> This was not just a democratic revolution, but a federal one as well. Although established through the overthrow of its government by a foreign power and overseen by outside forces, as demonstrated above, it was subject to intense negotiation and remains open to the sort of informal processes of political negotiation common to other post-modern federal regimes.

Thus, contrary to the perception that there was no logic to the Iraqi state, the reality of the regional and international security environment provides Iraqis with a strong reason to continue their participation in a state structured to enhance their security, representation, and prosperity. This makes it fundamentally different from non-voluntary federal unions that have been prone to collapse, such as the USSR and Yugoslavia.<sup>451</sup> Voluntary federal systems have their own internally-recognized logic, and Iraq is no exception. In fact, in a 2007 survey of 80 nations, Iraqis ranked 6<sup>th</sup> in national pride with 86% expressing that they were “very proud” to be Iraqi.<sup>452</sup> As long as Kurdish social diversity is not threatened with destruction by the central government, leadership positions offer them legitimacy and power where an open conflict would revert them to rogue guerillas fighters. This is a compelling reason to avoid that potential, which opens the door

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<sup>449</sup>The original process has been highly criticized for not being based on such an inclusive foundation, especially given the important role played by American advisors and the lack of Sunni participation to either the drafting of the Constitution or its ratification. This will be explored in more detail, but in fact, while Sunni participation was lacking, the American weight in the process which tried to design a more unitary state alongside a Shia group that sought something similar was largely in line with the preferences of most Sunni political leaders at the time. I would also argue though that the Sunni preferences were largely not in-line with their own interests in a democratic Iraqi state, being based less in an articulation of their interests than opposition to anything proposed by the American occupiers. In fact, the system that developed of checks and balances serves their minority interests much better. Where the Constitution breaks from this, most notably in the case of Kirkuk, it established a democratic mechanism to weigh the majority of the population’s preferences in determining the outcome. This is in-line with Elazar’s claims regarding the need for the system to be based on expression of interests rather than coercion. The actual process through which the Kirkuk dilemma is likely to be resolved it also destined to go further than the Constitutional stipulations and be the result of informal negotiations that characterize post-modern federal system.

<sup>450</sup>It is important to take into account Riker’s analysis of federalism being first and foremost a means to pursue individual self-interest. By seeking out a federal bargain, it is not to say that the Kurds or other Iraqi groups saw this as the best option, but merely the most promising one to protect their long-term security interests and ensure their survival, Kleinerman, “William Riker’s ‘Rationalist’ Federalism”

<sup>451</sup> O’Leary’s typology makes this distinction, *ibid*.

<sup>452</sup>Inglehart, Moadel, and Tessler, “Xenophobia and In-Group Solidarity”

for compromises beyond so-called Kurdish “red lines.” In essence, by providing a process for divergent groups to attain a measure of representation and inclusion in the political process, the federal states legitimizes otherwise illegitimate and informal authority, and thus supplies its own incentive to see the state maintained. As long as the Iraqi state maintains its commitment to its covenant then, it creates a space whereby group interests can be negotiated and moves the logic of contestation between groups away from a zero-sum calculation of independence or subjugation.

However, while this system is rooted in a more organic logic moored to the diverse interests of its respective groups, it fundamentally requires a federal ethos. As Elazar argues in regards to state formation, the Iraqi regime was being thrust away from the hierarchical model of state origin most idealized by Jacobin France and rooted historically in the formidable use of coercion,<sup>453</sup> to one that would be based on a covenant between citizens and state. Federal states create a grand bargain, stipulating adherence to a set of core principles “beyond the letter of the law,” that bind them together in perpetuity.<sup>454</sup> While still subject to the rationale of power politics, this compact is more than “just a legal device that protects the rights and integrity of parties to the covenant,” it requires adherence by the contracting parties to an ethos that acknowledges and accepts diversity rather than seeking to destroy it.<sup>455</sup> It breaks from the Hobbesian (and even Lockian) vision of the contractual nature of the state where there is one vote, one time, to introduce a certain fluidity, where the parties of the agreement maintain their unique claim to sovereignty while agreeing to the mechanisms by which they also relinquish a portion to common purpose.<sup>456</sup>

The new Iraq was indeed formed with the intention to function as a direct act of the people, united in their difference, seeking to create a system whereby no one group could monopolize the instruments of state power and wealth for their exclusive ends. For the first time in modern Iraqi history, as the TAL stipulated,

“The people of Iraq, striving to reclaim their freedom, which was usurped by the previous tyrannical regime, *rejecting violence and coercion in all their forms, and particularly when used*

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<sup>453</sup>Or the “accidental” construction of states through the intermarriage or close relations of their people, Elazar “Contrasting Unitary and Federal”

<sup>454</sup>Moots, “The Covenant Tradition,” 393.

<sup>455</sup>Ibid 394.

<sup>456</sup>Aroney, “Before Federalism? Thomas Aquinas” 41-42.

*as instruments of governance*, have determined that they shall hereafter remain a free people under the rule of law.”<sup>457</sup> [emphasis added]

The importance of this statement for the type of state Iraq is becoming is clear in the history of political thought. Past agreements failed to materialize, both because of the lack of political will behind the promises, but also because the very ethos of the previous Iraqi institutions ran contrary to the acceptance of its societal differences. The maintenance of power at the center, the control over appointments, and the way in which the agreements for decentralization were controlled and handed down from on high, left little hope that they could meet the demands of the Kurdish minority for representation or survive any resumption of conflict of interests between the center and periphery.

The new Iraq had to be more than a shift in institutions then. The construction of these checks and balances required a profound shift in the political and moral ethos of its population and leaders. While critics would argue that the stipulation that the constitutional referendum could only be passed if no more than 2/3 of the population of 3 provinces voted against it amounted to a “sectarian veto” that would undermine the unity of the new state, the reality was that this veto was necessary to uphold the basic ethos of the new government.<sup>458</sup> Without the minority 3-province veto, the Constitution and basis for federalism in Iraq would have been fatally undermined from the outset,<sup>459</sup> a mere re-institution of the same coercive method of governance. In fact, this provision also sets the terms for any future revisions of the Constitution, establishing more than any other the dramatic shift in founding principles from the previous Iraq and remaining the most vital final arbitrator of its future survival as a constitutional democracy<sup>460</sup> composed of more than one political community, united voluntarily toward a common purpose.

However, it is this fact that also lies at the heart of Iraqi federalism's ongoing vulnerability. Developing a new ethos and establishing a federal pattern of behavior will take time. Federal values are not widespread among either the population or its representatives, and

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<sup>457</sup> “Law of Administration for the State of Iraq,” Preamble.

<sup>458</sup> Footnote 18

<sup>459</sup> Interview with Massoud Barzani, President of the Kurdistan Democratic Party, December 2004, Salahhaddin, Iraq.

<sup>460</sup> The new Constitution was drafted by the elected representatives of the nation, rather than the initial American hand-picked council, laying the groundwork for the legitimacy of the new system, Morrow, “Deconstituting Mesopotamia,” 564, this was in part due to the religious *hakum sharii* issued by Grand Ayatollah Sistani against the drafting of the constitution by un-elected representatives of the people (<http://www.sistani.org/messages/eng/ir5.htm>).

there are still significant points of ongoing contestation that could lead to the resumption of warfare between various groups if not adjudicated in a manner that is deemed fair to all sides and reinforces rather than challenges the logic of the new state. As with other post-modern federal states, Iraq will have to wrestle in applying its covenantal agreement to constantly recognize the conflicting pull of its different constituent parts and interests. Chief amongst these will be the need to address Schmitt's federal antimonies: the fact that the main impetus that drives states to enter a federation, the preservation of their own independence, must yield at least in some measure to the needs of the federation.<sup>461</sup> It must seek both unity and disunity then as it progresses with a focus on the overriding task "to fashion a political bargain in which all major Iraqi groups feel they have a stake in the country's future...whether Iraq can become a democracy will depend, most of all, on Iraqi political leaders, and the decisions they make to widen the political arena or not, to share power and resources or not, to build a system of mutual security, or instead, try to dominate and even crush their opponents."<sup>462</sup> A new ethos must guide this ongoing bargaining between its respective peoples<sup>463</sup> in support of the institutional barriers that have been constructed, for it is not in the writing but rather in practice that the contours of this bargain take on real meaning.

While Iraq must chart its own course as all federations do, tailored to the unique characteristics of its society,<sup>464</sup> the new Iraqi federalism remains the best available system to offer such hope to its divided society.<sup>465</sup> In contrasting and examining its foundation with the traditional model of statehood practiced by its past regimes, this chapter has established the core promise that the new federal system holds in resolving Kurdish contestation to the Iraqi state short of secession. However, as the next chapter outlines, there is still ongoing conflict over the institutionalization of the federal values established in the constitution that threaten the application and promise of this new state-building exercise. The final chapter outlines the necessity of resolving these conflicts in a way that bolsters and defines Iraq's post-modern federation in-line with the experiences of other similar states, going beyond the underlining

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<sup>461</sup>For a discussion of Schmitt and federalism, Patrici, "Looking into Medusa's Eyes"

<sup>462</sup>Diamond, *Squandered Victory*, 331.

<sup>463</sup> Morrow, 'Deconstituting Mesopotamia,' 564

<sup>464</sup>The world's federations have an astonishing amount of difference in successful forms, see Chapman, "Structure, Process, and Federal," 87.

<sup>465</sup>Even in the Sunni Arab regions 52% felt their life was either significantly or somewhat better, and another 19% felt it was the same, see COSIT and Norwegian Research Institute Faso, "2004 Iraq Living Conditions Survey."

values of federation to address the specific comparative attributes and concerns as relevant to establishing a successful state-building experience throughout Iraq.



## CHAPTER 5:

### Going Astray: The breakdown of Consensus on Post-Modern Federalism

*“Nothing instills [counter]nationalism more than oppression and fear.”* – Qubad Talabani, KRG Representative to the United States<sup>466</sup>

In-line with the fact that institutional change rarely takes place outside of a crisis,<sup>467</sup> the trauma of the American-led invasion of Iraq has created the opportunity to establish an entirely new pattern of interaction between Iraq's state institutions and the Kurdish portion of its population.<sup>468</sup> The compromise drafted between the Iraqi government and the KRG to divide sovereignty has moved the Kurds away from a long history as a de-stabilizing force to one determined to protect Iraq's institutions and contribute to its security, development, and stability. It is the Iraqi state's best chance to build an inclusive nationalism that draws together its disparate parts, laying the basis through which the state can establish its legitimacy, defined not by the effectiveness of its ability to crush the free expression of its people but by “the foundation of such governmental power as is exercised both with a consciousness on the government's part that it has a right to govern and with some recognition by the governed of that right.”<sup>469</sup> This is the true and ultimate measure (as de Tocqueville argued on behalf of British constitutionalism over French monarchical absolutism) of state strength<sup>470</sup> and offers the people of Iraq a pivotal opportunity to redirect the course of their tragic history.

Most fundamentally, the development of federalism in Iraq has opened new opportunities for participation and the articulation of group interests. In doing so it has created avenues for the dispersal of political capital in Iraq that not only favor the resolution of the Kurdish crisis, but also hold tremendous opportunity to resolve the impetus toward “competition and rivalry” that has “historically been the principle course of instability” since its independence.<sup>471</sup> In

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<sup>466</sup>Qubad Talaani is the son of Iraqi President Jalal Talabani and the KRG Representative to the United States, quoted Ritz, *Huffington Post Blog*

<sup>467</sup>Krasner calls this “punctuated equilibrium,” borrowing the term from evolutionary biology, see Eldredge and Gould, “Punctuated Equilibria”; Gould, “Drawinism and Expansion”; For studies showing its applicability to political science, see Grew, *Crises of Political Development*; Tilly, *Formation of National States*; Skowronek, *Building a New American State*

<sup>468</sup>Among others, Phebe Marr has called this a “revolution,” “Iraq's Identity Crisis,” 41.

<sup>469</sup>“Legitimacy,” *International Encyclopedia of the Social Sciences*, Vol IX, 244.

<sup>470</sup>Tocqueville, *Old Regime and French Revolution*; For discussion see Hall, *Coercion and Consent*

<sup>471</sup>This characterization comes from Tripp, *History of Iraq*

relinquishing a singular focus on over-centralization and an alienating nationalism rooted solely in Arabism, the ground has been laid for the peaceful interaction of its communities. Indeed, the Kurds and majority Shi'a Arabs have shown that they can now find common cause with the long-time guarantors of Iraqi unity, the Sunni Arab middle, for the preservation of a robust Iraqi state in the right institutional context.

The evidence that these new institutions can offer Iraq deeper unity is clear: rather than the harbingers of the state's demise as federal nay-sayers have long postulated, at its darkest hours in the midst of sectarian bloodshed that could have torn the state asunder, the Kurds actively defended Iraq. They demonstrated a commitment to preserving a democratic, decentralized Iraqi state far beyond mere pronouncements, with Kurdish battalions acting as a steadfast force during much of the post-war fighting. Men who had lost entire families in defiance of control from Baghdad, marched south to restore stability to a country they had long-sought to destroy. Whenever the Iraqi state has foundered, it has been the Kurdish leadership that has stepped up to rescue it right up until the current moment when the Barzani Initiative used the prestige of KRG President Massoud Barzani to issue guarantees to both Sunni and Shia Arab parties to form a broad-based government after the 2010 elections. Clearly, it was not the idea of Iraq itself that was inimical to the Kurds' deeply-held interests and identity, but rather a certain type of homogenizing state. Their inclusion in the instruments of power offers to not only bind them to the state, but also set up the sort of safety valves that resist the despotic recentralization of authority by preserving multiple sources of social, coercive, and political power. While it is wisely argued that Kurdish actions have stemmed not out of love for the Iraqi state, but rather as a cold hard political calculation of their odds of survival should they secede without international support, the proactive nature of their intervention to save Iraq's institutions gives reasonable pause and indicates just how deep the geo-political reality of the Middle East pushes the Kurds toward a long-term commitment to preserving Iraqi sovereignty over independence.

Yet the profound changes that have given birth to this transformation are still very much in infancy. The post-collapse chaos has subsided and some semblance of normalcy has returned, but the key axes of Iraqi federalism remain open to political contestation between those seeking to maintain the maximum power in central institutions and the largely Kurdish-driven (and since joined by a significant group of Sunnis and Shia Arabs) desire to interpret the Constitution in a manner that gives life to the federation by granting the Regions significant say over their own

affairs. It is clear from an examination of the two largest outstanding issues between the Kurds and central government – territory and resource allocation-- that the disputes indeed revolve around very different ideas about the type of state Iraq should become and whether to preserve the federalism envisioned in its Constitution. Without agreement on these issues, Iraq cannot establish the stability needed to attract foreign investment and achieve the economic development required to legitimize itself amongst the population at large. Nor, more fundamental to its long-term survival as a state, can it signal to all of its population that its guarantees can be trusted; that Iraq will now be a state of laws that can incorporate and respond to the desires of its diverse citizenry.

The periodic efforts then to derail compromise on outstanding issues still present a very real threat to the inculcation of democratic and federal values in the new Iraq, and in fact, the very survival of Iraq as a unitary state. While some of the disagreements are the result of vague language, most stem from interest jockeying between various groups determined to maximize their power in the new system using the logic of the old. If Iraq is to move away from the centralized totalitarian past, those who seek to dominate or oppress must meet capable and successful checks on their designs. The guarantees made to electoral minorities like the Kurds cannot be so weakened as to render them meaningless, easily revocable unilaterally from Baghdad as under past regimes, or renewed conflict is not only likely but inescapable. This has proven true not just between Kurds and Arabs, but seems increasingly likely between Sunni and Shia Arabs as well.

The most disturbing and potentially derailing moves to the Iraqi state-building experience under federalism have thus been sporadic attempts by an amorphous and changing coalition of neo-centralists around Prime Minister Maliki to circumvent and ultimately render void the deals that offer regional institutions the requisite independence to maintain themselves. Presiding over the end of the insurgency, Maliki transformed his initial obscurity into widespread popularity amongst Iraq's Shia Arabs as a capable strongman willing to stand up to hated sectarian militias. Whereas ISCI had a strong federalist tradition, the Da'wa Party's new predominance within the Shia coalition has substantially shifted the rhetoric in Baghdad toward a more virulent and exclusionary form of Iraqi nationalism that often attempts to obstruct even the clear lines set out for the development of oil resources and the final status of Kirkuk.<sup>472</sup> While debate on the exact

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<sup>472</sup> The best source for the history of Shia political movements and the different approaches to the issue of

parameters specified by the Iraqi Constitution is healthy, where the contest is not over wording or points of ambiguity but rather over an unwillingness to stand by the federation, the results are much less optimistic. The calculations that drove the model of centralization and control that decimated and alienated Iraqi society to abject failure are indeed unchanged whether a Sunni, Shia or Kurd sits atop the pyramid.

This chapter traces the dissolution of the initial harmony between the Kurds and some of their Shia Arab allies<sup>473</sup> as it has slowly eroded through the rise of Prime Minister Nuri al-Maliki.<sup>474</sup> Fleshing out ongoing issues between those seeking to reconstitute power in a centralized state<sup>475</sup> and the Kurdish-led efforts to institute the post-modern federal system envisioned in the Iraqi Constitution, this discussion is informed by the political nature of the debates to look at the evolving institutions of the Iraqi system in order to both identify and articulate the potential for the placement of boundaries between federal and state entities that can satisfy the desire to maintain Iraq's unity while respecting its diversity. This informs the third and final chapter's argument that the way forward must resolve the outstanding issues and end the ensuing gridlock in Baghdad in a manner that gives life to the post-modern federal regime outlined in Iraq's Constitution.

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federalism is in Reider Visser's various works.

<sup>473</sup>This party is now usually cited in English language sources as ISCI and will be denoted as such from here on out, even in historical references.

<sup>474</sup>Wikileaks documents have since indicated that the Kurds chose to support Maliki over the ISCI candidate, Adel Abdel-Mahdi, due to their own political rivalry. Al-Mahdi was known to be close to President Talabani and the KDP felt uncomfortable with his ability to be neutral in potential regional disputes that might arise and threaten their unity. This was the last time that ISCI, generally more favorable to Iraqi federalism and Kurdish demands, would put up a viable candidate for Prime Minister. Since the meteoric rise of Maliki after the defeat of the insurgency, their electoral weight within the Shia Arab coalition has become progressively smaller. It is well-known in Kurdish circles that Maliki was seen at the time as a weak candidate who was unlikely to build the federal government into a new Leviathan, infamously being forced to wait hours for meetings with Kurdish officials like Iraq Foreign Minister Hoshyar Zebari. Interviews with Kurdish officials, March 2011.

<sup>475</sup>As predicated in the previous chapter, the support of Sunni nationalists for this model of the state has gradually eroded to the point where they have almost adopted the Kurdish position at the end of 2011. The reasons for this are both predictable and logical, as their ability to articulate interests as a minority in a democratic system has matured.

### **Kirkuk and the Disputed Territories: Background and Constitutional Provisions<sup>476</sup>**

The importance of Kirkuk in Iraq's brutal history along with its large oil deposits have made its status one of the most disputed, emotive, and practical issues between the Kurds and other Iraqi groups. It is both a microcosm of Iraqi society, bearing a strong emotional attachment for Kurds, Arabs, Turkomen, and many minorities, and a very fundamental source of revenue for the state. This has not only been the case during the negotiations over federalism, but in fact dates back to the very inception of the Iraqi state when both large oil discoveries in Kirkuk and a concern for Sunni-Shia demographics drove the inclusion of Kurdish territory into the newly-formed British vassal state.

Likely a majority Turkmen city at the time with predominately Kurdish hinterlands and significant Arab minority, Kirkuk had an uncertain and disputed identity from the outset. This was deepened through the development of its oil industry, which encouraged in-migration and inextricably linked the region to the central Iraqi state, which --as it grew into a rentier police state-- demanded increasingly large sums of money to suppress societal discord. If Kirkuk was thought to be important to the Iraqi state by the British, the petrol-dominated course of the 20<sup>th</sup> century removed any question.

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<sup>476</sup> This chapter will mainly focus on the issue of Kirkuk. Though the final position of Kirkuk and the disputed territories are often grouped together, it is beyond the scope of this dissertation to discuss the fully nuanced aspects that separate the disputed territories from one another and from Kirkuk. The important themes that impact the resolution of Kirkuk and the tensions around this apply to the disputed territories as well. The disputed territories as they are referenced are those lands that lay outside the "green line" established by the Iraqi state's retreat from the Kurdish territories after the 1991 uprising and establishment of the no-fly zone. The border was arbitrary based upon such considerations by the Hussein regime as the appropriate place to defend from an attack from the north, but was also impacted by historical delineation of provincial borders which inevitably left some majority Kurdish communities (especially when these were religious minorities like the Yazidis or Shabaks) outside of the Kurdish provinces. Others were removed during border re-alignments by the Ba'athist regime out of concern for potential oil reserves. Some of the areas are majority Kurdish, but separated and not easily attached to the KRG territory because of intervening strips of traditional Arab communities (reminiscent of the issues that have plagued the demarcation of a united Palestinian state). Others are areas disputed as being part of the KRG or majority-Kurdish provinces but being themselves majority-Arab. Article 140 was designed, as with Kirkuk, to provide a way to determine where these areas should be located in the Iraqi federal regime through the same three stage process, but like Kirkuk and partly because of it, the situation has been repeatedly delayed. Most of those that are majority-Kurdish have been occupied by the KRG since the initial days of the war to unseat the Ba'ath. Now with oil reserves being discovered under KRG exploration contracts in some of the territories like Sinjar, they have become emblems themselves of the importance of oil in ongoing political contests in Iraq. Generally, the disputed territories include Baladruz/Mandali, Tuz Khurmatu, Khanaqin, Markaz Kirkuk, Hawija, Sinjar, Daquq, Dibis, Tal Afar, Makhmour, Sheikhan, Tilkeif, Akre, Hamdaniya. While the issues are distinct and important, a resolution to Kirkuk will likely make these minor points in the bargain to move forward on a just resolution to these issues.

Few (if any) would argue that Iraq's centralized authoritarian regimes were able to cope well with this dilemma. Kirkuk's history is riddled with a legacy of crushing injustices, whereby Kurdish and Turkish inhabitants were forcefully relocated or compelled to assimilate, neighborhoods were bull-dozed, and Arab immigrants were given preferential jobs and other inducements to resettle. This was couched in zero-sum calculations where the sectarian affiliation of the person in question became the definition of both their historical narrative and future opportunity. Not surprisingly, by 2003 the lines were so hardened between the communities that they could barely agree on what constituted Kirkuk or a Kirkuki. Hardly the booming metropolis of other Gulf oil towns, the post-Ba'athist Kirkuk was a devastated wasteland of ethnic tension,<sup>477</sup> where raw sewage poured down streets lined by a mish-mash of non-functional electrical wires and dilapidated houses. For many Kurds and Turkmen the province's place as their wrongfully-denied home was thus irrevocably ground into their psyche through the repressive state's Arabization policies.<sup>478</sup>

It was not surprising then that Kirkuk became a lightning rod for the ability of Iraq's various groups to co-exist under the new federal institutions. Resolution would be complicated by the fact that the Ba'athist violence and gerry-mandering had extended to other "disputed territories,"<sup>479</sup> including both the provinces along the border between the Kurds and Arabs and between predominately Shia and Sunni provinces.<sup>480</sup> Urgency consequently drove the first steps to find a democratic solution in Article 58 of the TAL, which devised a three-stage formula now commonly short-handed as "normalization, census, referendum."<sup>481</sup> As envisioned, the transitional government would lay the foundation for normalization through the establishment of an Iraqi Property Claims Commission (IPCC) to help compensate and relocate those brought into Kirkuk and disputed areas by the Ba'athists and aid displaced natives in returning and reclaiming their homes. This first normalization phase would end upon recommendations made by the

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<sup>477</sup>Turkmen and Kurds in particular engaged in repeated clashes in the city during the late 1950s. The issues were of both and ideological and ethnic nature, see Batatu, *Old Social Classes*, 913-919. Likewise, Arab and Kurd clashes between irregular groups were prominent from the early 1960s, Anderson and Stansfield, *Crisis in Kirkuk*, 35-6.

<sup>478</sup> This is in-line with ethnic radicalization theories proposed by leading scholars, which note that the more brutal the suppression of ethnic uprisings, the more radical the demands become, see Horowitz, *Ethnic Groups in Conflict*; Toft, *Geography of Ethnic Violence*. Posen, "Security Dilemma and Ethnic Conflict," articulates a security dilemma that is very applicable to the Kurdish case in the new Iraq.

<sup>479</sup> The most comprehensive discussion of this can be found in Anderson and Stansfield, *Crisis in Kirkuk*, Chapter 2.

<sup>480</sup> The fact that Saddam Hussein's regime considered the cleavage between Sunni and Shia Arabs in Iraq to be significant enough to warrant gerry-mandering is yet further evidence that the sectarian differences between Iraq's various communities long pre-dated an American influence.

<sup>481</sup> Addendum C: Article 140

Presidency Council to revert borders that had been gerry-mandered to alter the demographic character of the provinces.<sup>482</sup> Any movement toward a final resolution of Kirkuk's federal status would be delayed until this had been completed and a permanent constitution adopted, at which point Kirkukis were then to be allowed to vote on their status within Iraq's federation.

The process immediately ran into a host of problems that made its implementation difficult however, most notable of which was the growing insurgency and sectarian war that ground governance to a halt. General incompetence, lack of delegation, and corruption in Iraqi institutions rendered independent movement by the stipulated bodies difficult, and barely any of the tens of thousands of property claims made to the IPCC were ever resolved,<sup>483</sup> forcing the matter to be rolled over through Article 140 of the new Iraqi Constitution to the first permanent, elected Iraqi Government. The new executive acquired the responsibilities of the old along with a completion deadline of the 31<sup>st</sup> of December 2007 meant to hurry along the process and appease growing Kurdish frustration over delays.

While the bloody sectarian war between Iraq's Sunni and Shia Arabs stole headlines and government resources, the stagnation of resolution to Kirkuk's status allowed the development of a profound asymmetry of power in the province that dangerously stoked inter-sectarian rivalries. The Kurds' active participation in the war, superior organization, and years of prior semi-independence, naturally poised them to take a prominent role in the post-Ba'athist governing of the province and Turkey's decision to not allow Coalition access to their territory enabled thousands of Kurdish troops to move into the northern provinces to fill the vacuum left by the rapid Ba'athist capitulation. While Kurds viewed their decisive action as necessary to prevent the violence that occurred elsewhere, local Arabs and Turkmen were justifiably wary of the extreme and sudden defacto change in Kirkuk's power differential.<sup>484</sup> The arrival of radical Shia cleric Muqtada al-Sadr's representative in the province, Abdul Fattah al-Mousawi, deepened these tensions and saw the beginning of a Turkmen-Shia Arab alliance against the Kurds that advocated a virulent Iraqi nationalism married with Turkmen ethnic advocacy. Bloody anti-federal clashes

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<sup>482</sup>In the case that the Presidency Council could not agree, a neutral arbitrator was to be assigned first by them and in case of further disagreement by the Secretary General of the United Nations.

<sup>483</sup>Ayatollah Sistani was only the most vocal of the transitional government's critics, but there was a widespread belief even by those participating in the transitional government that the most difficult of Iraq's problems to resolve should be delayed until elections could legitimize the commitments made by the respective parties.

<sup>484</sup>Loyd, "Kurdish Ploy Brought Early End"; Notice also that this move revealed the typical fissures in Kurdish policy between the KDP and PUK. The KDP withheld their forces under an agreement with the US forces, so it was largely PUK forces that entered the city in the immediate aftermath of the war.

soon followed between the groups,<sup>485</sup> with only the active presence of Coalition troops preventing a spiral into all-out sectarian blood-letting.

Efforts to rectify the perceived imbalance by establishing a council with mandated equality between Kurds, Arabs, and Turkmen, and minority representation for Christians,<sup>486</sup> did little to assuage the tension<sup>487</sup> even though the quotas likely offered Arabs (and probably Turkmen) disproportionate representation.<sup>488</sup> Kurdish attempts to share power by appointing Turkmen to act as the provincial council leadership and deputy police chief also went largely ignored by the more virulent sectarian parties, namely the Iraqi Turkomen Front (ITF).<sup>489</sup> The fact that appointees were not affiliated with the most sectarian parties, and were willing to participate in cross-sectarian efforts to govern created a strong sense of resentment amongst those already skeptical of Kurdish intentions. The crisis consequently deepened as Kurdish control was accentuated by the insurgency. Neighboring some of the worst violence and having had “loyal” Ba’athist areas attached to it during Arabization, Kirkuk in fact proved one of the most challenging recruitment fields for the new order, enhancing the sort of ethnic imbalance that has contributed to a rise in intergroup violence in other troubled areas.<sup>490</sup> While official estimates of the security forces put the ratio within a reasonable realm at around 50% Kurdish, the number of unofficial Kurdish intelligence forces that had swarmed into the province from both the KDP’s *parastin* and *asayesh*, and the PUK’s *zanyari* was much greater.<sup>491</sup> As with most ethnic conflicts, the perceived bias of these security forces made their performance suspect and by extension the

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<sup>485</sup>Several were killed in these clashes and there are mixed accounts of what transpired to set off the violence, see “Arabs, Turkmen Demonstrate Against”

<sup>486</sup> “Calm Begins to Return to Iraqi City of Kirkuk”

<sup>487</sup>Most notably was the inclusion of Turkmen Irfan Kirkuki as the major representative of the Turkmen community. Hailing from the Turkmen People’s Party, which had substantial ties to the PUK, he was often vocal in criticizing the ITF, see “Iraqi Turkmen Refuse.” Ultimately, the Council was in little position to govern the province anyhow, since it had almost no funds and faced US oversight of all decisions.

<sup>488</sup>Stansfield and Anderson, *Crisis in Kirkuk*

<sup>489</sup> The ITF is now in Allawi’s INA coalition.

<sup>490</sup>This has been noted in many developing countries, with a rich literature exploring the importance in conflict resolution of creating a trusted and ethnically balanced police and security force in order to give political compromises legitimacy, see for example Weitzer, *Policing Under Fire* . Even where ethnic tensions are low, imbalances in security forces between different communities can delegitimize state institutions, see Tyler, “Policing in Black and White”

<sup>491</sup>These forces had almost unchecked ability to manoeuvre in the area, acting extra-judicially on terrorist threats and engaging in secret raids of civilian dwellings. The dangers of this division were well documented if difficult to address, with later Wikileaks dispatches revealing that Americans noted a pattern of growing hostility to the Kurds among other Kirkuki ethnic groups due to occasional “provocative actions” such as forced, secret abductions by Kurdish security forces thought to be part of an effort to tilt the balance of power in their direction, see Shadid, “Kurdish Officials Sanction Abductions”



provincial government they supported, deepening cross-sectarian antipathy and encouraging the further segregation of neighborhoods.<sup>492</sup>

This pattern of conflict and growing resentment amidst efforts to nominally share power in unelected provincial institutions continued from 2003-2008, largely relegating Kirkuk to a simmering, stagnant cold war. The fact that Article 140 was initially a compromise which denied the immediate handover of Kirkuk to the KRG or that the normalization process was first advocated by Turkmen parties to compensate for the horrors of Arabization, were gradually lost to the annals of history. The prospect of a future referendum encouraged each community to stack the deck in their favor and view the actions of rivals as hostile to the ultimate security of their own democratic rights. Protests organized by anti-Kurdish Turkmen and Arab groups against federalism were juxtaposed against large Kurdish demonstrations on behalf of the new government and Constitution. Repeated attacks (presumably by Kurds) on ITF headquarters in the city,<sup>493</sup> kidnappings and assassinations of prominent members of both communities, and episodic bouts of small-scale communal violence hardened these growing divisions in lieu of a democratic process to resolve the conflict.<sup>494</sup>

Contrary to the recommendations of some scholars,<sup>495</sup> stagnation and ambiguity thus did not breed peace. A lack of official recourse and growing unemployment brought only further violence, leading to open clashes between Turkmen and Arabs as well as returning Kurds. Since only around 5% of property claims were ever officially adjudicated, those left homeless or destitute were encouraged to seek extrajudicial recompense. The KRG funded the return of Kurds on its own, successfully relocating tens of thousands outside of the established constitutional mechanisms, while other groups received external funding for their reciprocal activities. Left to fester, new grievances thus quickly compounded old leading to heightened distrust between the communities and empowering more radical elements as vulnerable groups looked to their own ethnic groups to provide security outside state institutions that were unrepresentative, illegitimate,

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<sup>492</sup>This was particularly true in Northern Ireland and other societies that have witnessed large-scale violence between different ethnies or sects. In all of these cases, the communal makeup of the security forces plays a prominent role in the peace-making process and the restoration of trust between respective parties.

<sup>493</sup>“Arab Tribes Rally Against”; “Iraq Kurds Ransack Turkmen”

<sup>494</sup>The American occupation failed to take effective action to overcome the problem. Distracted by the chaos enveloping the rest of Iraq and wavering support for an unpopular war back home, they sought mainly to not upset the delicate balance that kept the province teetering on the brink of all-out sectarian war, see “100,000 Arabs Evicted”

<sup>495</sup>Both Joost Hiltermann of the International Crisis Group and Michael Rubin of the American Enterprise Institute have periodically advocated that the issue of Kirkuk should be delayed in order to allow the Iraqi institutions time to build themselves up.

or unable to meet their needs. With those least likely to compromise peacefully emboldened, demands soon far outpaced the actual representation of many groups such as the ITF, which received only around 10% of the vote in the province during the 2005 election, but demanded 32% representation in government institutions.

Rather than ease as the deadline for the referendum approached, the heightened tension between Kirkuk's respective groups was accentuated by growing disputes over federalism at the national level. As the sectarian civil war subsided over the course of 2007-2008 and a permanent, democratically elected (and thus more representative and legitimate) government took on more responsibility, the opportunity to focus on resolution of outstanding constitutional issues nominally became more plausible. The legitimate excuses for inaction however, only gave way to a more concerted determination to willfully ignore the compromises embedded in the Iraqi Constitution through rising neo-centralism in Baghdad. The Iraqi population's exhaustion from years of sectarian warfare created widespread resurgent popularity in nationalist politics, weakening the sway of the traditional federalist proponents in SCIRI<sup>496</sup> whose historical dominance within the Shia coalition had pushed majoritarian agreement on the formation of regions during constitutional negotiations, in favor of the growing popularity of the more nationalistic Da'wa Prime Minister Nuri al-Maliki. Maliki's meteoric personal rise not only rested on the defeat of sectarian militias, but his Da'wa party had a long history of antipathy to Iraqi federalism having left the INC in 1995 in protest against Kurdish efforts to adopt a federal vision for a democratic Iraq.<sup>497</sup> Da'wa's leadership had in fact historically favored a majoritarian, rather than inclusive form of democracy, and had only reluctantly embraced federalism in the constitutional negotiations<sup>498</sup> in order to realize their desire for certain Islamic provisions.<sup>499</sup> The continuing prominence of the Sadrists compounded these changes in the ruling coalition through ongoing efforts to stoke sectarian conflicts in support of fellow Shia Turkmen in Kirkuk and blockage of efforts to resolve territorial conflicts in Diyala and Nineveh.<sup>500</sup>

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<sup>496</sup>The support was not universal though.

<sup>497</sup>Feldman and Martinez, *Constitutional Politics and Text*, 887.

<sup>498</sup>Once widely thought to be the largest and most popular of the Shia political parties, by late 2008 ISCI was running a distant third to both Da'wa and the Sadrists. According to polling conducted by the Iraq Center for Research and Strategic Studies, Da'wa came in with almost 15% support among the population, followed in the Shia alliance by Sadrists at 4.1% and then SCIRI/ISCI at 2.4%. <<<http://thegroundtruth.blogspot.com/2008/10/iraq-center-for-research-strategic.html>>>.

<sup>499</sup>Ibid.

<sup>500</sup>"Iraqi MPs slam planned Kurdish Constitution"

The initial weak support of many in the Shia coalition for the Kurdish position had indeed stemmed partly from insecurity about where power would fall in a democratic Iraq, rather than a philosophical commitment to democratic or federal principles. Given that many had long-suffered as dissidents, the idea that Iraq should re-centralize when viewed as outsiders was a frightening prospect, but was much less so from a newfound position of authority in Baghdad. This underlying lack of political will was most visible in the failure of the Presidency Council to make the necessary recommendations for border revision for the census to be held, which given the clear documentation of these changes (in contrast to the complexity of land records) and the lack of ambiguity in the Constitution regarding their reversion, would be the most straightforward of Kirkuk's many dilemmas to resolve.<sup>501</sup> The fact that it too stalled made clear that there was little desire to see the Article 140 process carried forward by the Shia regime in Baghdad.

The more nationalist tenor within the ruling Shia alliance and lessening security demands elsewhere, especially after Maliki's success in the provincial election of January 2009,<sup>502</sup> freed him to turn attention to pressuring Kurdish peshmerga in the northern disputed zones. The need to stave off rising pressure from a rival electoral coalition forming under Prime Minister Allawi provided added incentive, leading to growing hostility between the central government and the Kurds with the potential for armed confrontation between troops loyal to the KRG and Baghdad requiring reinforced American troops along the trigger line. With the introduction of open lists the political climate in fact induced Maliki to take a more aggressive stance toward his Kurdish allies in the hope of drawing together a party under his personal banner that could appeal across sectarian lines to Sunni Arabs locked in conflict over the disputed territories.<sup>503</sup> A clear cut victory at the polls would free him from the unwieldy coalition of parties that had weakly supported his run as Prime Minister and sought periodically to unseat him. With Iraqis almost

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<sup>501</sup> Beginning with the first Ba'athist regime, Arab districts such as Hawija, Riyadh, and Zab had been gradually added into Kirkuk, while predominately Kurdish districts such as Chamchamal, Kalar, and Kifri, as well as Turkmen areas like Tux Khurmato and Qadir Karam, were detached from the province and moved to either Sulimaniyah, Mosul, Diyala, or Salahaddin. This demographic manipulation created a clearly Arab majority community in the Western part of the Kirkuk governorate that had no historical basis in the province, significantly shrinking the governorate and moving it noticeably west, see Anderson and Stansfield, *Crisis in Kirkuk*, 28

<sup>502</sup> "Take them Home Responsibly," *The Economist*, 5 Mar, 2009.

<sup>503</sup> ICRSS *ibid.* In response to what politician would do best for Iraq, Maliki finished first ahead of Ayad Allawi by a slim margin at 17.2% and 16.7% respectively. Jaafari gained only 7.9%, barely more than Kurdish President Massoud Barzani at 6.3%.

evenly split on whether Maliki's continuance in office would hurt or benefit the country,<sup>504</sup> Maliki found himself unable to compromise with the Kurds on important issues.

The Kurds were also facing electoral pressures stemming from political fragmentation for the first time. One of the two founding partners of Kurdish unity, the Patriotic Union of Kurdistan, had experienced a series of defections over issues of corruption, nepotism, and power-sharing.<sup>505</sup> The new Gorran, or "Change" Movement offshoot was demonstrating remarkable strength in traditional PUK strongholds, leading to occasional violence between security forces and protestors from the respective parties. Alongside justifiable criticism on internal matters, Gorran was waging an all-out assault on the Kurdish parties for their failure to produce on Kurdish nationalist issues such as Kirkuk.<sup>506</sup>

The pressures of the 2009-2010 election cycle thus set the stage for ongoing confrontations between the KRG-Baghdad, revealing a profound shift in rhetoric regarding outstanding federal issues. Maliki's inner circle of advisers matured past his Da'wa roots to include many strident centralists that came to oppose the Kurds on a variety of issues. On Kirkuk this most notably included, Abbas Al-Bayati, a Turkmen who strongly, vocally, and publicly advocated that Kirkuk receive a special status similar to Baghdad or become its own federal entity like the KRG in contradiction to the constitutionally-mandated democratic process laid out by Article 140. Attempts by Prime Minister Maliki to forge alliances with hard-line anti-Kurdish politicians in Kirkuk, Mosul, Diyala, and Nineveh, all of which were home to disputed territories languishing in ambiguity, led him to bring in former high-ranking Ba'athist military officers like Hassan al-Luhaibi (who led the 1990 invasion of Kuwait) and the virulently anti-Kurdish Al-Hadba Party in Nineveh in an effort to marginalize the Kurds.<sup>507</sup> In Kirkuk, Maliki even selected Major General Abdul Amir Zaidi to lead the movement of the Iraqi Army into the province, the same officer Saddam Hussein had sent a decade earlier to rid the province of Kurds. The

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<sup>504</sup>Ibid.

<sup>505</sup>The ailing head of the PUK, Iraqi President Jalal Talabani, faced an important secession crisis during this period. Gossip surrounding his serious heart condition and frequent trips abroad for treatment led to a conflict in the top echelons of the party, which saw longtime deputy Nawshirwan Mustafa leave to found his own media conglomerate known as Wishi. From this platform, he began attacking the KRG's incompetence and corruption, paying particularly ferocious attention to the PUK itself. Likewise, 5 other high-ranking members resigned during this period, including Kosrat Rosul, and the PUK was forced to delay taking over the Prime Ministership of the KRG from the KDP's Nechirvan Barzani due to a failure to agree on a candidate.

<sup>506</sup>Salih, "Changing Kurdistan," 3; Barzanji, "Kurds Kick off Parliamentary Campaign"

<sup>507</sup>Even American Senators recognized that Al-Hadba was an anti-Kurdish entity, see statement by Senator John Kerry, "Kerry Touts Obama's Nominee for Iraq Envoy"

General's first moves were to confiscate Kurdish farmland to establish a bulkhead, make antagonistic statements about the need to remove Kurdish forces entirely from the province, and begin scouting roads controlled by the Kurds in predominately Kurdish enclaves with the implicit threat of re-taking them.<sup>508</sup> These men shared a radical, rejectionist political platform that expressed a repeated desire to strengthen the central government and renege on the federalist commitments made to all Iraqis in the Constitution.<sup>509</sup> Unable to accomplish this through the clear legal mechanisms to do so, they increasingly sought extrajudicial maneuvers that raised the risk of an all-out conflict.

One such move was the establishment of extra-judicial “tribal support councils” in Kurdish-controlled areas in Mosul and Kirkuk (and even in the KRG), which Kurdish leaders instantly labeled as illegal, unconstitutional, and highly inflammatory attempts to circumvent the democratic process and legitimate, electorally-certified state institutions.<sup>510</sup> The councils were reminiscent of Ba’athist *jash* units, which were paid Kurdish tribal operatives used to destabilize inter-Kurdish relations.<sup>511</sup> The Kurd were not alone in their opposition, with other political leaders also seeing them as a thinly veiled attempt by Maliki to use public resources to force his will on resistant areas. This was a dangerous personal-narrowing of public power all too familiar to Iraqis, and even Shia parties protested openly against the formation of councils in southern provinces that had long moved past the violence that necessitated them in the Sunni triangle.<sup>512</sup> Not surprisingly then, Sunni parties too cried foul at the increasing centralization of Maliki’s power as he pushed into their enclaves, referring to him as Iraq’s new ‘dictator in the making’ and culminating in high-level resignations from the unity government.<sup>513</sup> The situation got so dire that Sunni, Shia, and Kurdish factions eventually convened in Erbil to take serious action to oust him,

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<sup>508</sup>Parker, “Iraq General’s Presence in Kirkuk”

<sup>509</sup>These were not the only examples, Maliki also cultivated ties with Sheikhs throughout Anbar during this time, including Ahmed Abu Risha (who described his perspective on Iraq during this time as being “very close” to Maliki’s) and Hamid al-Hais (who openly encouraged Maliki’s newfound toughness on the Kurds but urged that he needed to go even further), see quotes in Shadid, “Worries about a Kurdish-Arab Conflict.” Another prominent example was Sunni cleric and firebrand, Mullah Nadhim Khalil al-Jubori, who had openly been a leader in the insurgency that attacked US and Iraqi forces, see Myers, “Unity is Rallying Cry Ahead of Iraq Elections”

<sup>510</sup>See for example Dagher, “Iraqi Soldier Reportedly Kills 2 G.I.’s”

<sup>511</sup>“Iraqi PM Feuds with Kurds Over Militias”

<sup>512</sup>Ibid. Namely ISCI, and during this time, Maliki also refused to join and run on the Iraqi National Alliance platform as he had before with ISCI and other parties, even refusing diplomatic pressure from Iran to unite with other Shiite parties.

<sup>513</sup>Rubin, “Iraq Unsettled by Political Power Plays”; Chon, “Iraq’s Reluctant Leader Emerges as Unlikely Force”

only stopping short because they failed to agree on an alternative, not because they could not pass the benchmark on those wishing to see him removed.

Maliki's response was to simply ratchet up the pressure, declaring in early 2009 that the visas long issued for business and travel purposes by the KRG at international borders and airports would no longer be valid.<sup>514</sup> The Kurds understandably viewed Maliki's maneuvering as extremely provocative and threatening. The drumbeat for a potential war upon the impending exit of American troops gained speed, with the once reliable Kurdish forces progressively pushed out of Arab areas through Iraqi military reconfigurations in the now exceedingly volatile border provinces. Rather than wait in lieu of a democratic process, the Kurds maintained that the *peshmerga* played an important continuing role in providing security to the minority Kurdish, Yezidi, Shabak, Christians, and other communities that were still the victims of mass bombings and insurgent attacks<sup>515</sup> setting the stage for repeated armed confrontations throughout 2008-2009 between the two forces and between Kurdish units of the Iraqi military and their Arab counterparts. Kurds maintained that they would not withdraw from areas beyond the "green line" until the promise to account for the will of the people in the Iraqi Constitution was carried out, while the GOI and Maliki's allies began to use words like traitors and secessionists to describe Kurdish leaders.<sup>516</sup> Maliki himself accused the Kurds of dangerous sedition, arguing that the presence of *peshmerga* anywhere outside the borders of the KRG was "unlawful" and a "mutiny that must be severely punished."<sup>517</sup>

The attacks on Iraq's federal nature were soon made even more explicit, threatening not only the asymmetrical nature of Iraqi federalism but even the independence of the KRG itself with Maliki undermining the very basis of his coalition with the Kurds by threatening to see the federal government strengthened "at the expense" of the regions (of which there was only one, the KRG).<sup>518</sup> These statements were accompanied by a worrisome effort to create forces in the government loyal only to him, namely the Baghdad Brigade and an elite counter-terrorism force which led parliamentarians from all sects to note that the country was becoming dangerously

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<sup>514</sup>"Not so Happy," The Iraqi Army even went so far as to arrest an Italian businessman and tourist who had wandered south of the green line on a KRG-issued visa.

<sup>515</sup>Dagher, "Fractures in Iraq City as Kurds and Baghdad Vie"

<sup>516</sup> Maliki repeatedly tried to paint his conflicts with the Kurds as a matter of holding the country together, see Chon, "Iraq's Premier Maliki Says He Plans to Thank US for Sacrifices"

<sup>517</sup>Dagher "Fractures in Iraq City as Kurds and Baghdad Vie"

<sup>518</sup>Abouzeid, "Arabs-Kurd Tensions Could Threaten Iraq's Peace"

militarized.<sup>519</sup> Kurdish leaders, along with many others in Baghdad, openly referred to Maliki as a new Saddam and a dictator in the making, with ISCI leading a renewal of calls in Basra to establish its own federal region.<sup>520</sup> These were only a partial public glimpse of a dangerous escalation in the back room war of words exchanged between those that were once a symbol of Iraq's attempt to build "unity" and "consensus."

Indeed, the conflict was not just between the Kurds and Maliki. As the governing coalition crumbled, late 2008 saw the introduction of a series of parliamentary crises instigated by centralist-oriented Arabs of the July 22<sup>nd</sup> movement, along with a newly formed Arab Political Council constructed in Kirkuk to combat Kurdish influence.<sup>521</sup> The first crisis brewed over aborted attempts to stymie the KRG's development and independence by reducing their share of the Iraqi budget from 17% to 12% without a national census (which was being held up over Kirkuk) to determine the fair allotment of communal resources.<sup>522</sup> The provincial election law soon followed with efforts being made to block Kirkuk's electoral participation in order to mandate power-sharing on the old 32-32-32-4 post-war basis. The ongoing local conflict, notably the intransigence of the ITF and Arab political parties on the acceptance of proportional *democratic* representation,<sup>523</sup> almost plunged the entire Iraqi provincial elections into chaos when President Talabani vetoed the election law demanding that Kirkuk not be treated differently than other provinces. The Kurds argued that if representation was to be based on radical, rejectionist threats rather than electoral strength in Kirkuk, why not in Nineveh, Diyala, or any of the other provinces where the Kurds formed a significant minority that would likely be kept out of any important provincial offices.<sup>524</sup> The idea that sectarian quotas would combat sectarianism seemed particularly unfounded, but the response to the veto from the ITF was to boycott the scheduled October nation-wide census,<sup>525</sup> a move which quickly gained the support of Arabs in parliament to effectively kill it and deny information that could have resolved the important lingering budget,

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<sup>519</sup>Rubin, "Maliki Pushes for Election Gains, Despite Fears," see quote by Mahmoud Othman.

<sup>520</sup>"Barzani: Kurdistan supports Basra Region"

<sup>521</sup>Al-Ani, "Arabs Form Bloc to Offset Kurdish Dominance of Kirkuk"

<sup>522</sup>Fitfield, "Kurdistan: Other Iraq"

<sup>523</sup>The original provincial election law would have required that 2 seats on the Kirkuk council be reserved for Kurds, Turkmen, and Arabs respectively, with one reserved for Christians. Competition for the seats would then occur within each community for their allotted total rather than amongst them, see Ibrahim, "Kirkuk Row Holds Up Iraq Parliamentary Poll Law"

<sup>524</sup>See for example the quotes by Kurdish leaders in "Iraqis Find Another Blocked Road over Kirkuk"

<sup>525</sup>Williams, "Turkmen in Contested Oil-Rich Province Vow to Boycott Iraq's National Census"

governance, and development questions that were hindering the ability of the Iraqi government to make informed economic decisions country-wide.<sup>526</sup>

The impasse required external mediation and reassurance, notably UN Special Representative Staffan de Mistura's proposal to delay the crucial elections in Kirkuk while they went forward elsewhere in exchange for a concerted effort by the international body to establish the conditions for expelled Kurds and Turkmen to resettle in the province alongside a non-binding proposal on boundary changes within the course of the year. The agreement was attractive to the Kurds because it offered internationally-legitimized movement on both fronts of the normalization process. However, it was really the US promise to back such movement that sealed the deal for the Kurdish abdication on the provincial election law, with a trip in late July by Secretary of Defense Gates to Erbil where he promised continued US support for Iraq, the Kurdistan Region, and the resolution of outstanding issues based on the Iraqi Constitution.<sup>527</sup>

The animosity between Iraq's communities quickly spread however, as the 2009 provincial elections saw the return to power of Sunni Arabs along the trigger line. Most troublesome of which was the rise of the Ba'athist-affiliated, virulently anti-Kurd Al-Hadba Party in Nineveh.<sup>528</sup> The Kurds had controlled the province and much of its security since the war, but the return of Sunni Arabs to governing institutions emboldened Maliki to purge Kurdish officers from both the police and military in an effort to curry favor among these potential new allies.<sup>529</sup> This included the replacement of the largely Kurdish 4<sup>th</sup> Division of the Iraqi Army, with the largely Arab 12<sup>th</sup> in Kirkuk.<sup>530</sup>

As a consequence, the summer of 2009 saw a host of violent confrontations between the Kurdish list and Al-Hadba in the disputed territories, with the new Nineveh Governor Al-Nujaifi claiming all provincial positions, thus defying the consensus-based institutions that had become

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<sup>526</sup>Nordland, "Now it's a Census that could Rip Iraqi Apart"

<sup>527</sup>It is important to note here the difference in the way this was portrayed by the KRG and the United States government. The deal was brokered on a promise by the US to push for a referendum on Kirkuk within the year and express public support for the KRG. Instead, the US government releases focused on a continued commitment to Iraq and general mediation on outstanding issues based on the Constitution.

<sup>528</sup>Al-Hadba was antagonistic to the Kurds even before they won 19 of the provinces' 37 seats, striking an "uncompromising tone" on all things Kurdish and making statements that promised that should they win election, they would clear the city's security and police forces of every single Kurds (even though Kurds made up an important minority in the city), see for example "Mosul Governor Talks Tough on Kurdish Militias"

<sup>529</sup>Garcia-Navarro, "Iraq's Election Campaign Especially Bitter in Mosul"

<sup>530</sup>Recknagel, "Baghdad's New Security Steps"



the bedrock of democratic Iraq.<sup>531</sup> The Kurds responded by withdrawing the areas under their control from governance by the provincial council,<sup>532</sup> a threat that Nujaifi and his compatriots repeatedly tested by seeking to traverse through Kurdish towns while issuing statements that efforts would be made to cleanse the province of all Kurdish officials.<sup>533</sup> Locked in a simmering cold war, violent protests were a frequent occurrence in the disputed towns as citizens clamored for the promised resolution,<sup>534</sup> and by the end of summer Kurdish Parliamentarians were referring to the Nineveh government as “Ba’athists in different masks”<sup>535</sup> and threatening to unilaterally secede from the province.<sup>536</sup> Most of the Kurds living in Mosul west of the Tigris had fled the city, contributing to the sort of ethnic segregation that usually precedes violent sectarian conflicts.<sup>537</sup> Kurdish battalions and brigades, like the 34<sup>th</sup> Garmiyan Brigade, had also shown signs of revolting from the Iraqi Army, weakening its coherence.<sup>538</sup> This was particularly worrisome given that 2 of Iraq’s 10 divisions were mostly Kurdish, and Kurds formed a significant portion of at least 3 more.<sup>539</sup>

Unrest simultaneously grew throughout the summer in the Sunni areas, as the steep drop in oil prices over the year from \$147 a barrel to just \$50 strained Iraq’s ability to integrate the Sons of Iraq into the regular Iraqi Army. Under these circumstances, bombings and assassinations across Mosul were “relentless”<sup>540</sup> and disproportionately brutal,<sup>541</sup> leading all sectarian

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<sup>531</sup>Sly, “In Ninevah, Tensions Between”

<sup>532</sup>The Kurds both boycotted the provincial government and some local politicians threatened to unilaterally secede, see “Arabic Language Barred in Ba’shiqa Schools”

<sup>533</sup>Recknagel, “Baghdad’s New Security Steps”

<sup>534</sup>These moves also threatened Maliki’s rivals in the Shia coalition, with ISCI leading a renewal of calls in Basra to establish its own federal region. Many protests were held in Sinjar, Telafar, and Shekan during this period. When Nujaifi tried to enter the Kurdish town of Bashiqa on May 8, he was stopped and there were reports that a “shoot to kill” order had come from Erbil, though this is likely blown out-of-proportion, see reporting by Cockburn, “Iraq Gets Ready for the Yanks”

<sup>535</sup>“Mosul Governor Talks Tough On Kurdish Militias,” *ibid*; The KRG also arrested Nineveh’s provincial intelligence chief, Brigadier Arbdul-Rahman Ali in Sept 2009 on charges that he was involved in the August bombing in Sinjar that killed 21 Kurds in a crowded café, providing proof from others that had confessed to involvement that he had ordered the killing, see “Iraqi Kurds Demand Security After Bombing”

<sup>536</sup>For example, “Provincial Skirmishes Emerge in Ninewa”; This was particularly true after bombings in many Kurdish cities over the summer, see Fordham, “Iraq’s Kurds Caught in Sectarian Warfare,” which describes the actions of 17 Mayors including Makmour that threatened to join the Kurdish Region if security did not improve.

<sup>537</sup>By this time, Kurds claimed that around 2000 Kurds had been killed in the city and another 127,000 forced into refugee status by attacks from Sunni Arab militants, Recknagel, *ibid*.

<sup>538</sup>This happened on more than one occasion over the course of the summer of 2009. Not only did *peshmerga* engage in confrontations with federal troops but during the Khanaqin standoff, a Kurdish battalion commander and 200 of his troops defected, Abouzeid, “Arabs-Kurd Tensions Could”; The Garmiyan Brigade made it clear during these conflicts that it would only move or act on orders from Erbil, see “Southward Movements by Kurdish Alarm Baghdad”

<sup>539</sup>Cordesman, “How Soon is Safe”

<sup>540</sup>“Still Tread Softly”

communities to support the desperate need for a stabilizing third party.<sup>542</sup> The situation became so dire that KRG President Barzani and Prime Minister Maliki did not speak or meet for over a year, only ending the impasse in August of 2009<sup>543</sup> when Maliki recognized that he may again need the Kurds to form a government after he failed to entice enough Sunnis away from Allawi's coalition (a pattern of behavior not unlike the dictatorial leaders of Iraq's past catalogued in the historical chapter).<sup>544</sup> Thus, while a Baghdad politician was accurate in noting that one "could win an election on an anti-Kurdish platform alone,"<sup>545</sup> the fact that one could not rule without Kurdish support because of inter-Arab rivalries kept the potential for all-out conflict in check.

The confrontation along the border between Kurdish and Arab communities was thus moving further from a negotiated solution just as American troops were preparing to leave. A rising tide of neo-centralism and neo-nationalism made the likelihood of compromise on keeping US troops in the country unlikely,<sup>546</sup> despite the importance of the American presence to preventing an outbreak of violence between the two sides.<sup>547</sup> Joint patrols between Kurdish and Arab troops,<sup>548</sup> as well as efforts to rectify imbalances in local security and police forces,<sup>549</sup> barely managed to keep the war cold.<sup>550</sup> The results were clear, lending to an overall uptick in violence and halting legislation on oil, but the true toll of stagnation and ambiguity regarding the future settlement of the issue was exacted on the inhabitants of these areas. As violence dropped by 91% in Baghdad, Kirkuk saw only a 28 percent decline, making the per capita number of attacks double in Kirkuk that of the rest of the country.<sup>551</sup> Insurgent networks that were torn asunder elsewhere remained largely intact with very effective and deadly roadside bombings continuing to plague civilians.<sup>552</sup> As experts noted, it was the political situation that made Kirkuk's security

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<sup>541</sup>Babington, "Suicide Attacks Down"

<sup>542</sup>McDonnel, "US Military"

<sup>543</sup>Bakri, "Iraqi and Kurdish Leaders"

<sup>544</sup>Myers, "Unity is Rallying Cry"; Shadid, "Maliki Created Coalition"; Sly, "More Iraqis Seek to Move"

<sup>545</sup>Coburn, "Iraq: The Final Countdown"

<sup>546</sup>Myers, "4 Mortar Shells Land"

<sup>547</sup>Shadid, "Kurdish Leaders Warn of Strains"; Druzin, "US to be 'invisible partner'"

<sup>548</sup>"US May Work with Arab"

<sup>549</sup>By mid-2009, Arabs and Kurds both made up about 35% of Kirkuk's security forces, with Turkmen accounting for another 28%. Of course, this did not account for the approximately 8,000 Kurdish asayish that remained active in the province, Ibrahim, "Arabs Fear Kurdish Grab"; also Tharp, "Kirkuk: A Place that Should be Seen"

<sup>550</sup>US intervention prevented two divisions of the Iraqi Army, one Kurdish and one Arab from coming to blows in Makmur later, Shadid, "Kurdish Leaders Warn of Strains"

<sup>551</sup>Knights, "Kirkuk: The Land the Surge Forgot"

<sup>552</sup>For example, Mathmoud, "Death Toll from Iraq's Kirkuk" covered the deadliest blast that year in Iraq on a largely Turkmen town.

problem so deadly and prevented the development of a stable, trusted, and properly trained police force that could serve its multiethnic communities.<sup>553</sup>

Baghdad's refusal to allot Kirkuk's government its fair share of the federal budget due to the perception that Kurds controlled both the police and political instruments effectively hindered remedial efforts and reflected how important the regional federal provisions were to preserving autonomy in the new Iraq. Ongoing attacks on the vital oil infrastructure, such as the pipeline to Turkey, hampered investment in Kirkuk's super-giant field which was already at risk of serious degradation. Lacking regional status, which allowed for straight proportional allotment of federal money, Kirkuk was thus left to limp along as the most oil-rich backwater in the Middle East. Its people were subject to kidnappings and assassinations, affecting every Kirkuki, and possibly even being used to cover for intra-sectarian grievances.<sup>554</sup> No one was left unscarred, with massive car bombs targeting even "simple people" with little hope that perpetrators would ever be brought to justice.<sup>555</sup> Across the disputed territories, violence disrupted the regular patterns of life, leaving young men without work and families without access to basic services or healthcare.<sup>556</sup> Many of the people across these areas in fact disregarded the "prospect" of a future Arab-Kurdish civil war, arguing that they had already been struggling to survive in the midst of one for years.<sup>557</sup> Regardless of sectarian affiliation,<sup>558</sup> the failure to resolve the status of these areas created a dangerous, unsustainable rift vulnerable to exploitation for those seeking to destroy the Iraqi state and turn its communities on one another.<sup>559</sup>

### **Oil and Gas: Background and Constitutional Provisions**

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<sup>553</sup> Knights, "Kirkuk: The Land the Surge Forgot"

<sup>554</sup> Some accused Kurdish officials of killing the young Kurdish journalist though no evidence was ever provided to substantiate the claim. Soran Mama Hama worked for the "independent" Kurdish newspaper Lvin and had recently written an article on police connections to a prostitution ring when he was gunned down in his doorstep in Kirkuk, Filfield, "Kurdistan Press Pays for Tackling"

<sup>555</sup> Taha and Tharp's coverage of the Jun 20, 2009 bombing in Kirkuk, "Suicide Bomb in Kirkuk." This particular bombing targeted Shia Turkoman. Many of the bombings seemed especially garnered to give rise to ethnic infighting and finger-pointing.

<sup>556</sup> See for example the impact on Sunni villages, Douglas, "Small Iraqi villages targets for terrorist recruiting"

<sup>557</sup> Coburn, "Kurdish Faultline"

<sup>558</sup> "Kurd Fighter, Turkman Police"

<sup>559</sup> Dagher, "Minorities Trapped in Northern Iraq Maelstrom," where the description of how minorities in particular along the fault line lived in undeniably harrowing and is very similar to the sort of proxy wars that occurred on a larger scale between the US and Soviet Union during the Cold War.

Intimately tied to Kirkuk and the disputed territories is the pivotal issue of Iraq's vast natural resources. The control over the development, sale, and management of its oil are critical to the long-term viability of its institutions, not only accounting for the vast preponderance of state revenue but potentially lending the capital for the state's disintegration into smaller petrol states. Fear that oil revenue will be taken by electoral victors to the exclusion of others indeed remains one of the main sources of conflict over the status of the disputed areas and drives intense rivalry over the control of its central institutions. As the preponderant source of state income, the ability of the Regions to play an important role in its management and development will be critical to their ability to resist federal destruction and a recentralization of the Iraqi state.

The applicable statutes in the Iraqi Constitution were thus hotly negotiated and carefully worded to gain broad-based agreement, requiring also the introduction of some ambiguity and the delay of specific issues for future legislation. However, the overall perimeters were clearly outlined for a dualist vision that would divide authority between the local, regional, and federal governments. Found in Section 4 under the “powers of the federal government,” the relevant articles were in fact specifically listed outside of the enumerated exclusive jurisdiction of the federal institutions in Article 110. This made them subject to the stipulation that all non-enumerated federal powers were reserved for the regions, but was balanced by its clear listing under the powers of the federal government to ensure coordination of the industry and the fair allocation of vital revenue across the country. In fact, the wording repeatedly and clearly stresses the importance of the federal and regional/provincial governments sharing authority. Article 111 in particular takes great care to declare that oil and gas are *both* owned by all the people of Iraq, in all regions and governorates.<sup>560</sup>

The intention was clear that neither the federal, regional, or provincial governments were to have exclusivity in dealing with these issues in a way that would strip all from obtaining equitable benefits. Article 112 continues on to explicitly state as much, providing more detailed information about how this sharing of authority and profit should occur.<sup>561</sup> It outlines that regions, provinces, and the federal government should work in conjunction to manage present fields, distributing revenues based on a fair representation of population with special consideration for

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<sup>560</sup> As Haysom points out, the fields are subject to joint management and concurrent control by the federal and regional governments since it does not lie under the exclusive rights of the federal governments and all other rights are reserved to the Regions, “Forging an Inclusive and Enduring,” 146.

<sup>561</sup> Iraq Constitution excerpts Addendum D.

those areas that suffered from economic discrimination under the previous regime and in order to ensure balanced development throughout the country. The second part commits all to work together under market principles to accomplish these goals. Beyond these general principles however, the Constitution is silent.<sup>562</sup>

Already containing far more ambiguity surrounding how policy should be implemented, the oil issue was thus particularly susceptible to the changing power dynamics within the Shia coalition away from the more federalist-minded groups that played a prominent role in the initial constitutional negotiations. This was further complicated by the technocratic particularities of the industry and the necessity of meeting not just national or state needs, but also accounting for the pivotal role that foreign direct investment would play in the execution of any policy. The legacy of Iraq's nationalistic oil policy under Ba'athism, and polarizing, strongly-held beliefs among many Iraqis that oil should be either governed by market principles or deployed as a national tool against an exploitative Western interest, did not aid in resolution.

During the initial chaos of the sectarian strife gripping the country, the issue of Iraq's oil policy was in fact predominantly focused on obtaining the security needed to attract foreign investment, rehabilitate existing fields, and ramp up exports to finance the country's reconstruction. With the rejection of democratic institutions by the most nationalistic elements in the Iraqi electorate relatively little attention was paid to the implications of an overall national strategy for the industry, giving the ephemeral impression that there was some broad agreement that best market principles would govern the trade. This opened the door for the KRG to take action to establish its own oil policy and exert control over its right to manage natural resources found within its jurisdiction without the fierce and vocal criticism that would come later. Beginning in 2004, KRG officials in fact signed a number of exploration and joint production-sharing contracts with small international frontier oil firms in an effort to chart an independent policy. While seen as risky and not devoid of controversy at the time, the passage by national referendum of an extremely decentralized constitution that appeared to broadly grant such authority in 2005 paved the way for a relatively swift transition.

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<sup>562</sup> Federal experts have generally agreed with this understanding of the relevant articles, see a detailed discussion in O'Leary, *How to Get Out*, 127, which is summarized by: "Article 111 [which regulates Iraq's oil and gas] is also *not* specifically listed among the shared powers of the federal government and regional governments (specified in Article 114). Therefore, there can be no presumption that Article 111 – or Article 112, which I shall examine presently – must be treated as a wholly shared power, that is, one for which both the federal and regional governments are permitted to legislate. By implication, the federal government can automatically legislate only for governorates that are not regions."

The Kurds viewed these contracts as legal, falling within the specific mention of “present” or “current” fields as a restriction on federal institutional reach into the conduct of their management of new discoveries. This was a strategic differentiation they had indeed lobbied for in constitutional negotiations, whereby the Kurds agreed with their Shia counterparts to share control and revenue from the existing super-giant fields in order to gain the authority to continue to set oil policy within the KRG.<sup>563</sup> The Constitution did indeed nominally, if not explicitly, wrest regions a predominant role in exploring and managing any new fields, a gamble that paid off for the Kurds with large oil deposits being found in several of the KRG's early exploration blocks. Thus, while the Kurds were never able to win explicit, formal agreement on new fields the general understanding of the Kurdish coalition was that they would have an exclusive right in this regard, an interpretation that seemed initially would meet only scattered resistance from the Shia ruling coalition with steady progress being made to hash out specifics in a draft law by the Council of Ministers to be put before the Iraqi Parliament.

Roadblocks began to emerge though, slowing the drafting of national oil policy to a crawl as the same election imperatives and power realignments mentioned in relation to Kirkuk shifted the rhetoric of major Shia parties in favor of a more centralist orientation. This forced the Kurds to agree to an enhanced shared responsibility and coordination even over new fields, additionally codifying that the federal government would take the prominent role on tenders for the existing fields. With these changes in place, by 2007 all of the major players had thus come to agree on a draft federal bill that would govern the industry. In January 2007, a cabinet-level committee representing all of Iraq's communities presented the bill with a flurry of typical rhetoric about how its widespread support indicated a renewed national unity and formed the basis for inter-sectarian cooperation.<sup>564</sup>

Giving neither the regions, nor the federal government sole jurisdiction over hydrocarbons development, the law stipulated a middle road, ensuring that regions could initiate the contracting procedures for oil fields in their jurisdiction, but granting a federal committee the authority to disprove the deals on a strictly laid out criteria of principles. Regions, like the KRG, that were producing greater than 150,000 barrels per day would also have the option to establish their own

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<sup>563</sup> O'Leary *ibid*, 128: wording in the Arabic version of the constitution that the federal government would take a lead (though not exclusive) role in regards to current fields, consulting the relevant provincial and regional authorities when applicable.

<sup>564</sup> Quoted in Glanz, “Draft Law Keeps Central”

operating company. This was meant to avoid allowing the central government to exert the sort of dominance over the industry that would fuel despotism and arbitrary encroachment on regional rights, while still allowing for a mechanism to ensure productive central oversight and coordination. The bill would also privatize the country's oil resources with the hope that this would professionalize its decisions and remove much of the over-politicization that has traditionally plagued the industry's development. As had been previously agreed though, the revenue from the export of oil would be accrued in a centrally-managed account and then distributed out to the regions based upon their established share of the Iraqi population. The central government would also develop templates of acceptable oil contracts, establish an overall development plan that would determine exploration and extraction priorities, and draw up a list of acceptable oil companies.

The February 2007 draft law undeniably stepped back from the constitutional promises made to the regions, conceding some of the unilateral authority over new fields the Kurds felt entitled to by granting the federal government the right to review the secretive KRG contracts in order to verify they met mandates for commercial standards *and* relinquishing profits from the sale of KRG oil to the federal pool to be divided evenly based on population. For their part, centralists would give up claims to negotiating the terms on contracts or management of new fields, approving companion legislation re-iterating the constitutional provision on even distribution through lump transfers to the Regions.<sup>565</sup> The unconditional nature of these transfers, as with other federations, would ensure that the regions maintained an independent resource base conducive to the maintenance of a healthy federal-regional power balance. Unless Kirkuk joined the KRG, and even if it did so given the fact that it would fall under existing field provisions that granted predominant control to national institutions, the wording in the agreed law would likely mean that for many years to come the Kurds would receive a net benefit from Baghdad's transfer of 17% off all Iraq's sales. It would also ensure that any increase in oil exports that resulted from the new finds would evenly benefit all Iraqis, despite Kurdish management of the contracts, satisfying the provision that oil ownership remain with all Iraqis.

However, underlying dissonance among the ruling coalition on how much the Kurds could be pushed to concede halted the progress. The draft bill in fact, never made it to a vote in the

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<sup>565</sup>The draft law can be viewed on the Kurdistan Regional Government's website in both Arabic and English <<[www://krg.org](http://www//krg.org)>>>

Council of Representatives as the schisms between rising centralists and federalists widened, and some Shia parties expressed increasingly extreme positions. The most prominent example of the rising capital of emboldened neo-nationalists was the vocal Minister of Oil Husayn al-Sharistani. A nuclear physicist who was imprisoned and tortured in Abu Ghraib by the Ba'athists, Sharistani was appointed to the head the Oil Ministry in 2006 and quickly became a lightning rod for those seeking to back down from constitutional concessions to the Kurds. Sharistani took on an obstructionist tone from the outset, raising questions about annexes to the bill that would govern the review of KRG contracts, stating just after the announcement of the deal that regardless of language, the central government would indeed approve or disprove all contracts.<sup>566</sup> Relying on a close relationship with Prime Minister Maliki, he personally intervened to alter the carefully worded compromises,<sup>567</sup> rendering it unpalatable to Kurds by the time it reached a vote and thus sabotaging hope for agreement on a national oil policy as long as the Kurds remained a necessary partner in the governing coalition. The cadre around this rejectionist policy grew rapidly, with both Turkish and Iranian support lending Iraqi vassals to a more stringently centralist vision for the management of Iraqi oil than was outlined by the Constitution.

Sharistani adeptly handled the impending confrontation. Recognizing that he could not force the Kurds to stop developing their resources since they controlled and governed significant territory, he used the Kurdish position as a non-state entity, control over export pipelines, and international export rules to instead block the sale of the Kurdish fields' oil production. He effectively brought to bear against the Kurds the leverage they had handed the federal government in conceding control of existing super giant fields that promised lucrative, large, and secure rewards for major oil companies, claiming that not only would Iraq refuse to acknowledge the legality of contracts signed by the KRG but also that any foreign company that entered into a KRG deal would be blacklisted from auctions for exploitation of Iraq's super giant fields.<sup>568</sup> This effectively served to drive large international players away from risky exploration deals with the KRG, but Sharistani went a step further to try and discourage even small-scale ventures by putting pressure on other states to dissuade their domestic companies from doing business with the KRG. On January 27, 2008, after months of threats, Sharistani made an example out of the

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<sup>566</sup>Ibid.

<sup>567</sup> Sharistani has repeatedly claimed, contrary to any reasonable analysis of the Constitution that the federal Iraqi government has sole right to sign contracts for both existing and new oil field, see quotes in *Financial Times*, 24 May, 2006.

<sup>568</sup> Laurent, "Iraq's Oil Stalemate"



Korean National Oil Company which was actively working in the KRG by symbolically halting all Iraqi oil exports to the country of South Korea.<sup>569</sup> Other states like the US responded to ongoing diplomatic pressure, continuing to both publicly and privately advise companies to avoid engaging in contracts with the KRG until a national oil law was signed.<sup>570</sup>

The hard-line taken by Sharistani with at least the silent apathy from the Prime Minister drove a reconsideration by the Kurds of their support for the ruling coalition, leading to renewed meetings with potential allies to replace Maliki throwing the entire system into question. Tensions soon calmed though as the Prime Minister and his allies were forced to at least nominally engage in a continued dialogue with the Kurds over the course of 2008 and 2009, being still dependent on Kurds for the passage of a federal law that could entice large companies to rehabilitate Iraq's decrepit oil infrastructure on terms favorable to the state. As the improving security environment opened the way to launch an initial bidding round for service contracts and new refineries the still hands-on American military and diplomatic contingent also pushed the Prime Minister to make progress in order to reduce its own financial commitment to the unpopular war. However, nothing did more to encourage a rapproach between the centralists and Kurds as elections drew near than depressing oil revenues amidst stagnate oil export numbers and budget shortfalls. Growing discontent with government services added fresh incentive, but on such an ad hoc and sporadic basis that it prevented the laying of a prosperous, concerted plan that would be befitting the most vital aspect of Iraq's economy. Occasional breakthroughs between respective negotiators inevitably collapsed, plagued by a failure to agree to payment terms and a basic ideological divergence over whether contracts should be production-sharing (favored by Kurds) or fixed-fee service contracts (favored by nationalists like Sharistani).

Neo-nationalists continued to argue that the production-sharing contracts that the Kurds used to entice foreign oil companies were a violation of Article 111's stipulation that the oil of Iraq belonged to all of the people of Iraq, because it essentially promised ownership over a portion of extracted oil to foreign entities.<sup>571</sup> A rather weak argument from the perspective of constitutional experts, opponents of this philosophy which included both Kurdish and Arab

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<sup>569</sup> Janabi, 2008, p2.

<sup>570</sup> The extent of this American pressure was revealed during the Wikileaks cable episode, when one of the leaked documents showed that American officials had applied strong pressure to advise Hunt Oil from acquiring KRG oil interests, Lando, "US government advised Hunt Oil"

<sup>571</sup> Lebouachera, "Kurdistan Brands Iraq Oil Contracts"

technocrats,<sup>572</sup> hotly disagreed with this assessment as a ploy to deny regional rights. Calling the terms of Sharistani's proposals sub-economic, they pointed out that production-sharing deals were necessary to attract the large upfront capital expenditures from abroad to explore new oil fields in a risky, post-conflict state and as the first bidding round neared, the predominantly Arab executives in Iraq's Southern Oil Company in fact joined Kurdish officials in accusing Sharistani of a profound mismanagement of Iraq's oil resources leading to the loss of billions of dollars of revenue.<sup>573</sup> Calling the fixed service contracts unconstitutional in their failure to live up to fair market practices, these executives along with prominent ISCI members correctly predicted that the upcoming bidding rounds for Iraq's major oil fields would be a dismal failure despite the desperation of major oil companies to win access to the world's third largest oil supply. Contrasting the Ministry's performance with the KRG's over the 6 years since Iraq's liberation, they argued that in the time that the Kurds had signed dozens of contracts, discovered new fields, and brought production online for export, the already established fields under federal government had failed to attract investment from even a single company, seen stagnant or decreasing output, and actually degraded the extractable oil estimates due to poor maintenance.

These ongoing national failures,<sup>574</sup> budget shortfalls, and the support of some within the Shia coalition forced the Sharistani-led group to at times come close to reaching a compromise with the KRG in the coming years. The first such short-lived agreement came in the summer of 2009, which allowed 100,000 barrels a day to be exported from two new KRG oil fields to ports in Turkey. When exporting began, it was viewed as a monumental step toward reconciliation between the warring parties, with everyday Kurds breaking into spontaneous street celebrations. However, this breakthrough also motivated larger oil companies fed up with the slow pace of the federal ministry and skeptical of the service contract terms to move to acquire a foothold in the KRG's booming industry. Most notable was the multi-billion dollar acquisition by China's state-owned Sinopec to buy-out Addax Petroleum with the hope that the oil-thirsty Chinese economy would gain access to exports flowing from the Taq Taq field.<sup>575</sup>

<sup>572</sup> For example, Baxter, "Iraq Oil Minister Faces Questions"

<sup>573</sup> Ibid.

<sup>574</sup> Lebouachera, "Kurdistan Brands Iraq Oil Contracts"

<sup>575</sup> Duce and Cunningham, "Sinopec Group Agrees to Buy." This was China's largest oil acquisition at the time, acquiring the rights to the Taq Taq field that had been exporting oil since the agreement between the KRG and Baghdad went to effect on June 1, 2009.

Unfortunately, these gains represented an existential threat to Sharistani's centralist coalition not least of which came from the frequent comparison with their own dismal management of the first tender bids for existing fields, the announcement of which was continuously delayed until it became clear that the touted awards were limited to the ratification of only one contract. As Kurdish and ISCI officials, alongside Iraqi oil technocrats and international forecasters had predicted, almost all of the major oil companies decided to walk away from the exceedingly poor terms offered by the Iraqi Ministry of Oil. Seemingly to distract from this failure, the Ministry quickly turned on the new export agreement with the KRG, claiming that since it did not recognize the legality of the contracts private companies had signed, it would allow the exports of 100,000 a day to continue, but would not pay the companies the contractually-promised revenue.<sup>576</sup> Since all export revenue was going to Baghdad, the initial understanding had been that Baghdad would pay the resulting profits promised to the companies, before splitting the remaining revenue with the KRG along the 83-17 population-based terms.<sup>577</sup> Instead, the Ministry now demanded the oil companies be paid out of the Kurdish share of the revenues, a stipulation that would almost certainly result in a net loss for the Kurds and huge, unearned windfalls for the Iraqi government that would render the 83-17 split meaningless and violate constitutional stipulations that revenues be split based on population. Sharistani also withheld nearly 400 million dollars from export revenues as “payments” for estimated profits the Kurds had made off of other KRG oil deals. As a result, Kurds were soon threatening to keep all revenue, and exports were duly suspended.<sup>578</sup>

These moves essentially destroyed the export deal before it had even really begun. Kurds responded by threatening to veto any federal legislation that would encourage investment in the larger oilfields as long as the Ministry was run by Sharistani.<sup>579</sup> Devolving into what would become a characteristic tit-for-tat pattern of conflict between the two, the KRG also immediately released a statement arguing that any awards signed in the recent bid round held by the Ministry were “unconstitutional and against the economic interests of the Iraqi people,” especially pointing to Sharistani’s proposed award of 8 fields including super-giants Zubair, West Qurna, North and South Rumailia, and Kirkuk as not having gone through the Article 112 constitutionally-mandated

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<sup>576</sup> Abbas, “Iraq Says Kurd Oil Deals”

<sup>577</sup> Chulov, “Kurds Lay Claim to Oil”

<sup>578</sup> Baker, “Iraq's Kurds to Hold”

<sup>579</sup> Chulov, “Kurds Lay Claim to Oil Riches”

consultation with respective regional and provincial governments.<sup>580</sup> The Kurds were particularly critical of the attempt to award contracts for Kirkuk and Bai Hassan, both of which were located in the disputed territories. Pointing to the fact that they were still responsible for actual security and governance in these areas, the KRG Oil Minister issued a thinly veiled threat to any oil company signing agreements for these two fields as a paper fantasy, because the KRG would not allow any actual investment or development to occur unless it had first been consulted.<sup>581</sup> The message was clear, if the central government could hold up progress for the KRG's fledgling oil industry, so too could the Kurds both as crucial partners in the coalition government supporting Maliki and as actual holders of power in the disputed areas and Kirkuk, cause insurmountable problems for the federal state's efforts to raise new revenue.<sup>582</sup>

The Kurds were joined in this opposition by technocrats and parliamentarians from all of Iraq's major sects, whose position was affirmed in a report by Iraq's Oil and Gas Committee. The criticism expressed a very real concern that the structure of Sharistani's deals would encourage oil companies to maximize cost over production, thereby reducing the gross intake of revenue for the Iraqi state and permanently undermining its most valuable resource, a fact backed up by international experts.<sup>583</sup> The response from Maliki and other federal officials was to turn up the heat in the media accusing the KRG of engaging in secretive, corrupt oil contracts and illegally selling oil to Iran, an accusation that would not only lead to destabilizing, at times violent protests against the KRG by the Kurdish opposition, but would also cause an international incident in mid-2010 when *The New York Times* seemed to confirm that oil was in fact crossing the border from Kurdish fields to Iran in violation of international sanctions.<sup>584</sup> For their part, Kurdish officials claimed the exports were merely by-products and that oil from Kirkuk was also crossing the border in illicit deals struck by corrupt officials in Baghdad,<sup>585</sup> an incident that served only to further undermine the legitimacy of government institutions at both the national and regional level.<sup>586</sup>

<sup>580</sup> Statement by the Kurdistan Regional Government, "Federal Oil Ministry's Proposed Contract "

<sup>581</sup> Yackley, "Kurds Say Iraq Oil Deals"

<sup>582</sup> Ibid.

<sup>583</sup> Open Letter from Ashti Hawrami, KRG Minister of Natural Resources to The Federal Council of Ministers

<sup>584</sup> Dagher, "Smugglers in Iraq Blunt."

<sup>585</sup> Dagher ibid

<sup>586</sup> El-Tablawy and Barzanji, "Oil smuggling to Iran embarrassment"; Waleed and Shorsh, "Oil Smuggling Allegations Widen"

The problem was unfortunately not solely confined to Sharistani's rouble-rousing alone, for as KRG Oil Minister Hawrami noted, it was Iraq's Finance Ministry that was responsible for receiving the payments for exports and disbursing payments under the export agreement that broke down.<sup>587</sup> While Sharistani was nominally at the center of a personal push that far outstripped his actual powers or responsibilities, the disagreements on how oil should be managed went deeper than public pronouncements between a relatively small group of Iraqi politicians damaging both the Iraqi oil industry and overall state capacity. Indeed, a great deal of money was at stake, with Sharistani's defenders arguing that many of the difficulties were the result of budget shortfalls, funds diverted to electric and water grid upgrades or simple corruption.<sup>588</sup> Much of the allocated federal funding in fact went missing, falling through the cracks of one of the world's most corrupt regimes according to most indexes and contributing to suboptimal investment in an industry which needed 50 billion to upgrade dilapidated infrastructure. Despite the fact that international oil experts argued that the Kurdish contracts were in fact more conducive to anti-corruption measures,<sup>589</sup> the MOO continued to use its own model to sign contracts for the operation of fields in 2009-2010 and took on the direct operation of another 11 after failing to secure contracts.

The lack of a federal law and the division of responsibilities it outlined governing the way in which contracts should be allocated thus contributed greatly to mismanagement, opening the door for extreme levels of corruption not only on the federal level but also within the KRG. Without the joint process of oversight and management, along with the ensuing checks and balances envisioned under the constitution, Kurdish officials were not obligated to transparency either. As long as they were in negotiations which pitted Kurdish national interests against the regime in Baghdad, neither popular pressure nor legal instruments could operate in a concerted way to stem abuses. During times in which cooperation between the KRG and the central government seemed possible, the KRG would in fact be pushed to take such steps but with each breakdown came renewed opacity.<sup>590</sup>

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<sup>587</sup> Abbas, "Iraqi Kurdistan says Foreign Firms," attempts by the international community to arbitrate did not immediately resolve the conflict, but ongoing talks sponsored by the European Union on the matter of the allocation of revenues did eventually lead to a resolution in 2011, see "Conference on the 'Future of Iraq' "

<sup>588</sup> "Kurdish Prime Minister Attacks "

<sup>589</sup> See for example the testimony of Pedro van Meurs to the Iraqi Oil and Gas Committee in January 2009, where he concluded that federal service contracts were "corruption inducing", because the terms of the contracts are not fixed.

<sup>590</sup> Abdullah, "Border Breaches Reveal Iraq's Rifts"

The impact that the failure to agree on a national law was having on the ability to secure favorable terms and encourage foreign direct investment was particularly telling as the late 2010 elections approached, casting doubt on whether the ad hoc contracts the Maliki government had signed would be executed should he lose control of the government to radical neo-nationalists (namely the Sadrists) or pragmatists. Even at inception, the majority of parliamentarians had after all opposed the contracts and questioned the legality of awarding them without a national oil law, parliamentary approval, or proper oversight, noting that Sharistani was running the industry as a one-man show<sup>591</sup> and hog-tying the Kurds by pressuring foreign governments to refuse their exports without his personal approval.<sup>592</sup> After billions of dollars of investment, and years of improving security, Iraq's annual oil exports were still lagging behind pre-war numbers and experts were declaring Iraq's national oil management a colossal flop.<sup>593</sup> These frustrations at least partially accounted for the slight edge Allawi's group gained over Maliki in the final vote tally, most easily traced to the pursuant lack of services like electricity.

Once again, Maliki was forced to bring the prospect of the original 2007 oil law back to the table in order to maintain the necessary Kurdish support for his continued governance.<sup>594</sup> The Kurds also upped the pressure on him through diplomatic channels, wresting a public pledge from the US to use its “influence to ensure that the outstanding disputes...were resolved based on the Iraqi Constitution and Article 140,” in order to allow the government formation to move forward.<sup>595</sup> Since the major sticking point continued to be Sharistani's changes to the original draft, namely Baghdad's veto power over regional oil contracts and dangerous re-centralization, returning to those terms in exchange for nominal Baghdad oversight over production and policy throughout the country was one clear path forward. Fresh discoveries in the KRG upped pressure for resolution to enable exports,<sup>596</sup> but correspondingly raised the stakes on the amount of money

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<sup>591</sup> Londono and Ibrahim, “Iraq Set to Invite Bids.” One parliamentarian even sued the Maliki government after the first contract was awarded, challenging the fact that it was not seeking parliamentary approval for its contracts and operating without a law to establish the terms of the contracts, see “Iraq's Oil: Now Comes”

<sup>592</sup> Kurtaran, “Iraqi asks Ankara for Oil”

<sup>593</sup> See for example quote, such as this one from the Director of Middle East and Africa for the Eurasia Group, “Frankly I did not think it would be such a fiasco and embarrassment for the government,” says Rochdi Younsi, “It shows the level of disconnect between the Ministry of Oil and the oil companies,” in Walt, “The Reasons Behind Big Oil's”

<sup>594</sup> That pattern of confrontation and resolution was clear, by January, Maliki was already courting the Kurds again, see Ryan, “Iraq's Maliki Calls for End”

<sup>595</sup> SKR Presidency's statement from Secretary of Defense Robert Gates' trip to Erbil, “US Secretary Gates: We are committed.” Also Abdullah, “Border Breaches Reveal Iraq's Rifts”

<sup>596</sup> Holland, “Kurds' Boom in North Iraq.”

involved.<sup>597</sup> These divergent pressures made the issue particularly dangerous, with analysts arguing that while sectarian issues would never destroy the Iraqi state, these tensions certainly could.<sup>598</sup> In fact, with each large oil discovery amidst the ongoing issues with the federal regime, the incentive for the Kurds to pursue independence over cooperation increased. American Ambassador Christopher Hill was correct in noting that the Kurdish officialdom had long ago recognized that they might be better off with 17% of all Iraq's oil rather than 100% of their own if Kirkuk's fields could not be wrested from Iraqi control,<sup>599</sup> but increasingly large deposits found in areas that they held unquestionable control and access to began to look exceedingly large enough to finance an independent state.<sup>600</sup>

In an effort to stem this risk and encourage continued investment, the Kurds offered the MOO another compromise to get oil exports back on track in lieu of a final agreement in early 2010. Under the terms of the offer, the two fields would resume the 100,000 bpd production, which would be offered first to the Iraqi State Oil Marketing Organization (SOMO) to cover operating fees.<sup>601</sup> Presumably the Kurds would work out a profit-sharing mechanism out of their 17% of the revenue to further compensate the companies as per their contracts. While it would still amount to an unconstitutional split of the profits the Kurds were willing to risk the short-term inequity in order to establish a healthy long-term pattern of oil extraction and investment from abroad. Indeed, they extracted a commitment over the next few months from Maliki to agree to their terms as part of a 19 point program to form the new government,<sup>602</sup> including a promise to ratify the 2007 draft oil law within a year. This paved the way for the resumption of KRG oil exports in February 2011<sup>603</sup> under an agreement that allowed the companies to be paid before revenue was split on condition that the payments were merely transfers from the federal government for capital expenditures. This was soon followed by a statement from Iraq's new Oil

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<sup>597</sup> For example, "Gulf Keystone spuds Bijeel-1 Well." The Shaikan discovery made by Gulf Keystone also promised huge, easily exploited reserves. At least 3 world-class discoveries had been made at this point; Carslile, "Iraq Oil Minister 'Happy to Step Down.'"

<sup>598</sup> Holland, "Kurds' Boom in North Iraq."

<sup>599</sup> Interview, Conan with Christopher Hill, "An End in Sight for Iraqi Government"

<sup>600</sup> According to official records, eight new oil discoveries were made in the KRG, which signed 37 contracts with 40 companies, resulting in \$10 billion investment in the oil sector. The KRG also commissioned 3 refineries to enhance independence, with a total capacity of 200,000 barrels a day feeding three new power plants that provided over 80% of the region's power needs. The KRG projected that it could reach 1 million barrels a day by Jan 2014, with another 100-200 billion cubic feet of [non-associated] natural gas. See KRG Ministry of Natural Resources website.

<sup>601</sup> Dagher, "Incremental Steps in Iraq"

<sup>602</sup> Dagher, "Election Victories Help Kurds"

<sup>603</sup> Aqrawi, "UPDATE 3-Iraq, Kurds agree."

Minister, Abdul Kareem Lujaihi, agreeing that the issue was close to final resolution and that the GOI would recognize the legality of contracts signed by the KRG.<sup>604</sup>

Once again though, Maliki would almost immediately retreat from the principle of his commitments. While he appointed the new consensus candidate to run the Ministry, he also promoted Sharistani to Deputy Prime Minister with portfolio control over the industry. Around this time, secret negotiations between the KRG and Turkey regarding the possibility of building a pipeline to transport oil directly from these fields for export gathered speed, moving the Kurds one step closer to being able to access outside markets without Baghdad's approval. Publicly, this merely took the form of a private investment vehicle to link up to the Kirkuk pipeline. However, efforts to connect with the major EU market took a backslide around the same time as Sharistani signed a joint energy declaration with the EU's Energy Commissioner confirming respect for the right of Baghdad law over all oil and gas exports.<sup>605</sup> Of course the MOU merely affirmed a commitment to abide by federal law, which did not exist and could not pass without Kurdish support. Thus continued the Gordian knot between Baghdad and Erbil, where neither could act to fully take advantage of its oil wealth without the other.

However, the results of the election, which seemed to affirm that Iraq's Arabs would remain so divided that the Kurds would be a necessity for any governing coalition for the foreseeable future, alongside continued frustration with Baghdad and ongoing oil discoveries in KRG blocks, fundamentally changed the terms of the debate as even major oil companies began to express interest in KRG oil fields behind-the-scenes. Throughout the year a flurry of petrol activity engulfed the Region with more medium-sized companies openly entering or buying out the small frontier firms that had initially scooped up stakes and majors<sup>606</sup> engaged in quiet low-level discussions.<sup>607</sup> The granting of these new PSCs undermined the commitment the KRG had made to stop signing new contracts until passage of a national law. In fact, some of the contracts both at this time and dating back to the early post-war years were for areas technically outside of the KRG in disputed territories, symbolizing that the perceived reward and ease of working with

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<sup>604</sup> Mawloodi, "Council Given 48 Hours"

<sup>605</sup> Watkins, "EU affirms authority of Iraq's central." Of course the MOU merely affirmed a commitment to abide by federal law, which did not exist.

<sup>606</sup> "Chevron Goes Hunting In Iraq"

<sup>607</sup> In just one month in the middle of 2009, Afren, Vallares, Canadian ShaMaran, Hess and PetroCeltic all obtained interests in the KRG. Vallares also began negotiations to acquire DANA natural gas interests in KRG territory.



the KRG was becoming so attractive to oil companies that they were even willing to take on this added risk and legal ambiguity.<sup>608</sup>

This fact pushed the central government to resolve the issue, with heightened pressure coming from Parliament on the newly formed Maliki Cabinet to present it with a bill. While delayed as the respective parties negotiated the forming of the government through 2009, and the specifics of power-sharing through 2010, by 2011 Sharistani as Chair of the Cabinet Energy Committee was again presenting a draft to Parliament that would give the federal government nearly unreserved control.<sup>609</sup> Seeking to nullify past drafts,<sup>610</sup> the proposed bill was almost identical to the changes made to the 2007 draft that was rejected by Parliament due to strong Kurdish opposition. The new bill would put the Prime Minister, who was already under attack for assuming unconstitutional control over Iraq's financial and security institutions, in charge of a powerful national Oil and Gas Committee with the authority to approve or reject all contracts signed by the Regions (even over new fields). In a thin attempt to meet with constitutional standards, the law allowed the regions to hold their own contract auctions, but gave the federal government veto power over them and any previous contracts it felt did not align with national priorities. Any control the regions had then would be superficial, confined to choosing companies rather than setting policy. The bill would give the federal government control far above and beyond that presented by the constitution, which detailed a strategy that was more advisory in regards to new oil discoveries.

The Kurds responded by promising to block any attempt to vote on Sharistani's version, presenting their own rival bill out of the Oil and Gas Committee with a much expanded role for regions and governorates, limiting the federal government to mere coordination of overall oil policy. The Kurdish bill would also allow for a more diverse, representative committee selection based on representation of all parliamentary interests, rather than the Prime Minister alone. Both sides immediately condemned the others' bill as a non-starter,<sup>611</sup> with the Kurds' being joined in their opposition by almost all of the major blocks in the Parliament who took exception with the extreme level of centralization under the Prime Minister's control proposed by Sharistani's

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<sup>608</sup> Lando, "US government advised Hunt Oil"

<sup>609</sup> Kami and Rasheed, "Iraq's cabinet approves delayed"

<sup>610</sup> Lando, "Iraqi cabinet seeks to cancel"

<sup>611</sup> "Kurdistan condemns draft oil"

Cabinet draft.<sup>612</sup> Sharistani for his part, rejected the idea that the bill in question deviated far from the already-agreed upon 2007 compromise, arguing that it in fact did not give the Prime Minister undue control over the industry<sup>613</sup> and that recent payments to oil companies based on the agreement with the KRG in no way validated the long-term recognition of the contracts' validity in the eyes of the federal government.<sup>614</sup> Not surprisingly, despite promises (and even reports that it had been accomplished)<sup>615</sup> by both sides to either agree on a new draft by the end of 2011 or simply revert to the original 2007 draft if they failed, the end of the year came and went with no progress.<sup>616</sup> While both continued to make public pronouncements, the hands of both to take action were tied, the Iraqi government because it had no law to function under and thus punish oil giants from engaging in ongoing contracts with the KRG,<sup>617</sup> and the KRG because it could not reach the most lucrative foreign markets without Baghdad's approval.

Thus, despite its great promise and the vital importance of proper deployment of its oil wealth, since the rise of neo-centralism in the governing coalition, Iraq's oil policy can be characterized as nothing short of an abject failure riddled with “widespread confusion about investment, production and lines of authority.”<sup>618</sup> It has bled over into other areas, preventing the potentially lucrative exportation of KRG natural gas deposits through the Nabucco pipeline which would not only bring immense economic reward to the Iraqi state, but also lower Europe's reliance on Iranian and Russian energy supplies.<sup>619</sup> The lack of legal oversight opened the door for widespread corruption, making both the KRG and federal officials subject to plausible accusations of extreme corruption<sup>620</sup> and thus disrupting the trust between state institutions and the Iraqi people.

<sup>612</sup> Heuvelen, “Analysis: Oil law dissent.” The exact reason for the slowing of the KRG's oil exports was unclear in September 2011, with the federal government claiming it was the result of a policy rejection of the newly proposed Cabinet law and the KRG in turn asserting that it was merely due to faulty technical management of the pressure in the export line, which was maintained by the federal government, Gamal and Rasheed, “UPDATE 5-Kurdish oil exports expected”

<sup>613</sup> Ahmed, “Shahristani: No Major Changes”

<sup>614</sup> Gibbs, “UPDATE 2-Iraq's Shahristani retains hard line”

<sup>615</sup> “Iraqi Government, KRG 'Agree'”

<sup>616</sup> In fact, by the end of the year, Lubaidi who had once said the problem was near resolution was now saying the Kurds needed to decide if they wanted to remain part of Iraq or leave, see “Kurds must decide to stay”

<sup>617</sup> “Exxon's Kurdish Deal has Political”

<sup>618</sup> Williams, “Laws Lag in Iraq”

<sup>619</sup> Phillips, “Turkey and Iraqi Kurdistan”

<sup>620</sup> McEvers, “Flow of Oil from Iraq”

The problem with general mismanagement and lack of coordination emaciated the very real benefit the Iraqi people could get from their most valuable asset, creating a situation where “across the entire country, there is a major lack of transparency...and without knowing exactly how much oil is produced, exactly how much is going to which refineries, exactly what fuel these refineries are producing, and exactly what happens to that fuel when it leaves the refinery, you're not able to find out who is smuggling and what they're smuggling, and who is selling and what they are selling.”<sup>621</sup> The potential consequences of this lack of coordination will increase dramatically as the KRG looks to bring online thousands of barrel per day export capacity. With the controversial entrance of oil giants like Exxon to the KRG<sup>622</sup> and an agreement to build and export through an independent pipeline via Turkey being announced in 2012, the very real possibility has arisen that the KRG will enter the international oil market without a coordinated policy with Baghdad necessary to prevent an over-saturation to the detriment of prices and return for the Iraqi people.<sup>623</sup> As a founding member of OPEC, the Iraqi state has long recognized the dire risks associated with such a (non)strategy, highlighting the crucial nature of resolving expediently ongoing federal conflicts.

However, the necessity to resolve such conflicts indeed goes much further. As the next chapter will draw out, the attempts outlined to re-centralize oil in the exclusive hands of the federal government and the Prime Minister threaten to destroy the very character of divided sovereignty introduced by post-modern federalism. In seeking to render the regions impotent to the designs of the federal government, it risks not only sending the Kurds back into an ‘exit’ option, but also to invigorate the destructive competition for central institutions (again unchecked by balancing alternative sources of power and authority) that has been a hallmark of Iraq’s tumultuous, despotic, and brutal past.

<sup>621</sup> McEvers, *ibid.*

<sup>622</sup> When Exxon penned a deal for 6 exploration blocks, the federal government unsurprisingly threatened to cancel Exxon's deals for the large West Qurna field. Refusing to comment, Exxon has merely continued ahead with both contracts. Insiders have acknowledged that Exxon, along with other giants, is tired of playing games with the federal government which seems to lack a coordinated policy and is unwilling to offer terms that make extracting oil from the super giant fields profitable given the risk of the investment. The KRG on the other hand, is getting increasingly attractive with its pragmatic policy under-girded by an approved law and continual announcement of large oil discoveries, Pfeifer, “Exxon signs Kurd exploration contracts.” Thus, while Baghdad did ban Exxon from the next licensing round, it is unlikely that the oil giant would have acquired a potentially more lucrative asset than it already had in the KRG., Bertrand, “Iraq Waiting for ExxonMobil Explanation”

<sup>623</sup> The KRG has already established an ambitious export strategy, seeking to put out 1 million b/p/d of crude by 2015, Kami “Iraqi Kurdistan eyes 1 mln bpd”

## CHAPTER 6:

### Getting Back on Track: A Federal Resolution to Conflict-Ridden State-building and the Foundation for Constructive Peace in Post-war Iraq

*“Power alone can balance power”*<sup>624</sup>

The ongoing conflicts over decentralization in Iraq are not surprising. New federalist systems are now predominantly found in post-modern states with “profound disagreements among the people about how to divide power, authority, and revenue.”<sup>625</sup> Previously thought to introduce centripetal forces on already weak states, theorists examining the dismal record of unitary states in conflict-ridden societies have returned to the idea that the introduction of federal or confederal structures can provide the basis for the construction of more viable states in many societies. Repeated studies have found in fact that negotiated federal systems typically have an important centripetal role to play in holding divergent communities together by providing mechanisms for incorporating peripheries into central decision-making (through intrastate federalism) or by coordinating decision-making among relatively autonomous levels of government that represent diverging societal interests (through interstate federalism).<sup>626</sup> Negotiations that imbue institutions with these conflict-ameliorating qualities have unsurprisingly been shown to be an effective mechanism to end violent secessionist attempts by sub-state territories, with Iraqi Kurdistan being far from the first example.<sup>627</sup>

Rather than undermining the legitimacy of the central state, devolving real authority to local or regional leaders with strong social legitimacy can (and has) worked to bolster the credibility of the state and its institutions in societies prone to cleavage. The idea that institutional settings can affect the nature of inter-communal social struggles stems as Krasner notes, from the

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<sup>624</sup>Corry, “Constitutional Trends and Federalism,” 108.

<sup>625</sup>O’Leary, “Power-sharing, Pluralist Federation, and Federacy,” 52.

<sup>626</sup>Hueglin, “Legitimacy, Democracy, and Federalism,” 47; Also Gibbins, “Federal Societies”

<sup>627</sup>Northern Ireland’s for example, confirms in Article 1 that it will remain autonomous from the British government, but identifies is as being a “self-determination entity.” Likewise, the 2001 Bougainville Peace Agreement in Papua New Guinea grants Bougainville wide ranging autonomy conditionally based on the renunciation of violence. Finally, the Dayton Agreements in Bosnia and Herzegovina and the Rambouillet process in Kosovo expressly acknowledged the right to at least internal self-determination for the parties in the conflict in order to establish peace. Akot’s research on the Sudanese peace process has likewise posited that decentralization is the paramount reason for prolonged periods of peace, whereby the marginalized groups gain a modicum of control over their own resources and management of their society, see Akot “The imperative of decentralization,” 76-77.

fact that “once institutions are in place they can assume a life of their own, extracting societal resources, socializing individuals, and even altering the basic nature of civil society itself.”<sup>628</sup>

This formula can work in both directions, aggravating or alleviating existing conflicts depending on whether the system can attract and incorporate outlying social legitimacy into the institutions of the state and create a stable foundation from which to begin the transfer of that authority into modern governing institutions, thus ameliorating conflict and institutionalizing resolution within the state rather than driving it outside into violence. This has most often involved decentralization of power in societies with profound social cleavages, whereby “to date, the most effective means for the peaceful management of demands for autonomy have entailed decentralization, such that the delineation and subsequent management of public goods devolved upon the concerned groups.”<sup>629</sup> This devolution eases pressure on central institutions to accommodate conflicting interests, allowing the state to represent and maintain multiple centers of legitimacy, authority, and power.

In the case of Iraq, this suggests that overcoming Ayoob’s security dilemma and meeting the challenge posed by Buzan to eliminate the vicious circle of unstable states through the strengthening of “socio-political cohesiveness”<sup>630</sup> requires the institutionalization over time of a set of institutions, norms and practices that can appeal to its disparate population and varied centres of socio-political legitimacy. The administrative division of the Iraqi state is designed to do just that by capitalizing on the ‘web-like’ dispersal of social control that has traditionally existed in the Kurdistan Region outside of governing institutions. Rather than leaving this power external to the state, it seeks to institutionalize it within using both an intrastate and interstate model whereby the Kurds participate in national institutions as full citizens for the first time in history while maintaining regional institutions to safeguard against majority encroachment on their special interests. The goal of such a devolution of power is to overcome the traditionally ‘vacuous’ nature of Iraq’s institutions<sup>631</sup> by creating new institutions in line with the loyalty and identification of the people. Rather than pit the defacto legitimacy of the Kurdish state against the dejure authority of the Iraqi government, it coordinates their respective sovereign-ties within a single institutional system constructed to adjudicate any conflicts of interest. These institutions,

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<sup>628</sup>Krasner, “Review,” 240.

<sup>629</sup> Heisler and Peters, “Scarcity and Management of Political Conflict,” 332.

<sup>630</sup>Buzan, “People, states and fear,” 18-40.

<sup>631</sup>Chabal and Daloz, *Africa Works*

agreed to through non-coercive negotiations, lay the bedrock for peace between the Kurds and other Iraqi groups, while simultaneously creating a very real democratic benefit throughout the country via their resistance to predation by those seeking to create an Iraq that is once again one-dimensional.<sup>632</sup>

Thus, while this process liberates the Kurdish region from external control it overwhelmingly does not desire, it also circumscribes the responsibility of the central national institutions to a more manageable array of responsibilities. As federalism has demonstrably done in Latin America, this process contributes to state-building by allowing historically weak states to utilize regional actors to improve their penetration into areas not integrated into the cultural or linguistic mainstream.<sup>633</sup> It devolves responsibility for some of the most strenuous, cost-producing, and contentious responsibilities onto local actors, easing the burden on already strained central institutions to provide a broad range of services and ethno-cultural representation. Rather than weaken the Iraqi state then, federalism is designed to save it from a colonial legacy of social division that has led to over 100 years of contestation and repetitive dictatorial regimes in Baghdad. Perhaps most importantly, it constructs barriers against the overweening centralization of power in the hands of a very few, which has been the greatest detriment to the construction of a strong modern Iraqi state given the diversity of its society.

Leaving outstanding federal disputes to fester in Iraq would consequently be a risky mistake. It has been a repeated theme amongst observers that the issue of oil and the disputed territories, being so fundamental to the core of the Iraqi state, should not be resolved too expediently for fear that they will unduly strain still vulnerable institutions.<sup>634</sup> This argument bore hefty consideration in the initial vagueness of the Iraqi Constitution, delaying more clear-cut language and hard compromises from participants. However, just as this ambiguity did not cool temperatures but instead merely introduced frustration, competition, and extra-judicial jockeying among the respective parties which has ultimately held federal legislation and governance hostage to these issues for almost a decade and re-opened the door for destabilizing neo-centralization, continued delay that upholds the simmering status quo presents a very serious challenge to the long-term survival of the new Iraq. As repeated game theory studies have shown, when conflicts enter a phase where one party is gaining militarily at the expense of another and thus upsetting a

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<sup>632</sup>This classification is used to describe many developing states, Evans, "Predatory Developmental."

<sup>633</sup>Hermann, "Federalism: Latin American Experience"

<sup>634</sup>ICG, "Oil for Soil,"

pre-existing balance of power, the likelihood of conflict increases (rather than decreases) quite dramatically.<sup>635</sup>

Iraq is entering just such a stage as the Iraqi Army again rebuilds and seeks to assert itself vis-a-vis the Kurds. Thus far tensions have been managed largely because of the very nature of federalism, which by decentralizing decision-making, “compartmentalizes political tensions and therefore allows for the co-existence of varying majorities.”<sup>636</sup> However, this devolution of power through federalist institutions is now seriously under threat and with it the tension-alleviating benefits of the new governing system. The long-term debates over where the bar will fall between the federal, regional, and provincial governments will naturally be open to the sort of evolution that has occurred in other federations, but what is now at risk of sacrifice is the very foundation of divided sovereignty that is part and parcel to the unforced maintenance of the state. As Maliki has ascended, the demons of Iraq's long and tragic despotic history, alongside lingering confusion of centralization as commensurate with unity and state strength, have opened avenues for the creation of a system whereby even his previous international supporters recognize that there is a complete refusal to share power with the electoral majority represented by Iraq's other political groups despite repeated promises to do so.<sup>637</sup> This goes beyond O'Donnell's concern for ‘delegative democracy’ or Zakaria's “illiberal democracy,” for in a state like Iraq with a post-modern federal society, the attempt to install even weak majoritarian rule threatens the very character of the state's claim to represent its peoples' electoral mandate.<sup>638</sup>

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<sup>635</sup> Stone, “Use and Abuse of Game Theory,” 216-244.

<sup>636</sup> Chandler, “Federalism and Political Parties,” 155.

<sup>637</sup> The recent IGC report provides a clear indication of the growing disillusion with centralized authority in Iraq. Once champions of the needs to build a strong, capable state in Baghdad that held unquestioned control of its resources and territory, the latest report indicates a growing fear that in the creation of this dream, Iraq is in fact beginning to resemble the dictatorial tendencies of its past that are inherently incompatible with the practice of democracy, see IGC, “Iraq's Secular Opposition.”

<sup>638</sup> O'Donnell, “Delegative Democracy”; Zakaria, “Illiberal Democracy.” Both make similar suggestions about emerging democracies that reflect not the liberal traditions of American-style representative democracy, but rather reflect systems defined by the same electoral methods of selecting leadership but vastly different practice of that leadership, whereby President/Prime Ministers once selected to run the country do so often without checks by other institutions or leaders. These issues are not unrelated to the institutionalization of federalism in Iraq, reflecting an underlying ethos that does not readily adopt the sort of liberal values inherent to the respect of difference discussed subsequently as undergirding strong post-modern federal states. These problems are indeed related, but distinct to the issues raised in this dissertation regarding federalism in Iraq. In post-modern societies, there are no grounds for the practice of such majoritarianism, as will be highlighted later, without such profound threat to the very distinct ethno-sectarian identities present in societies like Iraq that it fuels violent resistance to the state. Maliki (or any other Iraqi leader) cannot for the foreseeable future gain the sort of acceptance of central rule necessary to rule over the Kurdish periphery without extreme coercion, rendering any attempt to practice such

Rather than allow the federal institutions promised by the Constitution to blossom, every attempt has been made to render the compromises void. Initially supported by a broader group of Iraqis, including many Sunni and secular politicians loathe to see the Iraqi state fragment, it has become exceedingly clear to the majority of Iraqis now that the picture of a centralized Iraq (even if democratic) does not lead unquestionably to unity, but rather holds the potential for profound political fragmentation.<sup>639</sup> Without the checks and balances inherent on central power to the federal system, the Prime Minister and a small cohort around him have been free to ignore other power-sharing mechanisms, amassing almost sole control over both Iraq's security instruments and financial resources to the exclusion of governing partners that together represent the electoral majority of Iraqis (including its fellow sectarian partners like the Sadrists). This risks not only the inter-state institutions that preserve a sovereign realm for the regions to run their own affairs, but also the intra-state federal structures that ensure representation at the federal level for Iraq's varied socio-political interests.

Despite the evidence that in similar states federalism has been the key to creating a state that can possess a logical and eventually emotional attachment for diverse peoples, the association with dissolution has profoundly contributed to undermining the realization of the devolution of sovereign power necessary to protect against these neo-authoritarian tendencies. Without federalism, democracy itself can struggle to overcome the immense exigent pressure upon the governing system to consolidate power in the center to the exclusion of the pre-existing diversity of federal societies. The questions still outstanding about the exact function of these institutions are often mis-characterized then in an unnaturally bifurcated way, between unity or division, between strong regions or a strong national government. In fact, there is room to approach the key outstanding issues in Iraq with a mind to preserve both – to give the new federal and regional institutions the substance they need to defend against the historical proclivity of the Iraqi state to centralize and forcibly assimilate minorities, while still maintaining a genuine Iraqi national

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an illiberal or delegative democracy impossible. While federalism does not completely alleviate the tendency for such practices, it does mitigate the centralization that drives opposition to the state, and provide the sort of dispersal of sovereign power necessary to prevent attempts to annihilate its society's very real diversity. In states like Iraq, the practice of illiberal or delegative democracy, without federal institutional checks would in essence be non-democratic and return the state to the extreme contestation witnessed under authoritarianism. Unlike in DDs, where the head of state enjoys a broad popular mandate, no such authority can be said to be bestowed upon the cobbled coalitions necessary to sit atop the Iraqi pyramid.

<sup>639</sup>This is most evident in the coalition seeking to unseat Maliki, and repeated statements now even by Sadrists against the accrual of power amongst a small group in Maliki's parties (see "Sadrists Lose Faith"). Together the Sadrists, INA, and KRG-affiliated political parties represent a clear electoral majority.



character better able to defend itself from dangerous internal, regional and international predators. Instituting such a resolution to outstanding conflicts that preserves the underlying federal principles and ability to maintain separate axis of authority does not only bolster federalism or promote a Kurdish agenda, but is foundational to the overall health of the democratic Iraqi state and its ability to integrate different political factions into a workable governing structure. While a centralized Iraq has been a disaster, a meaningless federalism will consequently fare no better.

This chapter argues on behalf of a set of necessary parameters to resolve these key outstanding issues in a way that will benefit the vast majority of Iraq's people and lay the groundwork for genuine state-building, based on the firm contention presented throughout this dissertation that a successful solution must first and foremost protect Iraq's federation. In the first section, the broad lessons of successful post-modern federalism are laid out, informed by comparative evidence found in other states to argue that Iraq must seek to preserve the independence of institutions at both the federal and regional level in order to avoid the centrifugal pull of potential secession and maintain the centripetal tug of cooperative governance inherent to the practice of successful post-modern federation. The second section uses this outline of principles to analyze the parameters for state-supporting resolutions to the outstanding issues, establishing that the positions on oil and gas management and regional formation presented by the Maliki-Sharistani contingent threaten to dissolve the Iraqi state and should be abandoned in favor of practices and institutions that will preserve a diversity of authority and power. In so doing, it lays out the broad overarching principles that a compromise on the finite issues of resource and territory allocations must take to present a reasonable defense of Iraqi federalism. The chapter concludes with a brief reminder of the importance of establishing post-modern federalist norms for moving Iraq past the resource-fueled despotism of its past, contending that the goal of any resolution should not be seen as an effort to weaken the Iraqi sovereign but rather to create a strong state capable of providing for all its citizens, participating in the international community of states, and living in peace with its neighbors. Through the provision of services, representation, and security amongst *all* Iraq's people, an Iraqi federal state while not a panacea for all its ills, offers the best hope of building universal legitimacy over time throughout its territory.

### **A Federal Iraq: Guiding Principles for Resolution of Outstanding Disputes**

While sometimes treated by experts as secondary to its democratic transition, federalist

debates go to the heart of Iraq's new institutional character and will ultimately determine whether the state can engage in a genuine, inclusive state-building exercise or return to the oil-fueled despotism of its past. The original negotiations over the Iraqi Constitution clearly recognized as much, with Article 110 establishing the foundation for a highly decentralized federation where the exclusive powers of the federal government are *limited*.<sup>640</sup> This makes Iraq a federal system, where “reserved” powers are held not in the center, but on the periphery. When combined with the stipulation that when there is a conflict in laws at the regional and federal level, regional law will trump on issues not exclusively reserved to the federal state these clauses form the basis for the empowerment of Iraq's regions to maintain autonomy from the reach of the central government. As drafted, the Iraqi Constitution then is undeniably decentralized and empowering to the periphery. It is strictly limited in its absolute control to specified areas, which do not include mention of natural resources such as oil and gas or the territorial determination of federal units. The constitutional implication then is that in both of these areas, the regions and provinces will have *at minimum* an important and significant role to play.

The greatest challenge to Iraqi democracy and the implementation of its federal constitution indeed now revolve around the application of these clauses to two critical outstanding issues: the final status of Kirkuk and the disputed territories and the development, management, and dispensation of Iraq's vast oil resources. Given Kirkuk's own substantial oil resources, these issues are clearly deeply intertwined, but they are also critical to the entire federal structure of sovereign power. The Iraqi state relies on oil and gas for around 90% of its annual income, a substantial amount of which comes from Kirkuk's super giant field. If the central state can both determine who is privy to the federalist guarantees afforded by the Constitution (through territorial manipulation and exemptions), and has sole jurisdiction over the entirety of the purse strings, Iraqi federalism will cease to exist in any meaningful way because its institutions will be devoid of the basic independence needed to maintain themselves against unilateral destruction from the center. This is comparable to the ability to tax in federal states where the vast preponderance of state income stems from such powers, whereby it is widely recognized that the denial of the ability to tax would render the maintenance of sub-state institutional sovereignty and

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<sup>640</sup>Addendum B

thus federalism unsustainable.<sup>641</sup> Likewise, the territorial manipulation of regional boundaries strips regions of their sovereignty, rendering them devoid of federal status and making them unilateral creations of the unquestionable central sovereign.

Independence of character and resources is in fact the sole basis on which stable multinational federations have been built,<sup>642</sup> and is the defining hallmark of federation as opposed to the unilateral devolution that has been the signature of unsuccessful past Iraqi attempts to address Kurdish concerns. For real power to exist outside of Baghdad the main avenues of power must have more than one source of authority and be able to effectively resist the domination of one person or office. This provides the sort of checks and balances that prevent the tyrannical re-centralization of authority, but also that are critical to resisting less obvious destructive impetuses common to multi-national federations to pursue the sort of majoritarian democracy that alienates important sub-groups from state institutions and pushes groups toward 'exit' by stripping them of the option for 'voice.'

A cross-national look at the legacy of multinational federations is instructive on this point. Those that have shown themselves to be enduring reveal the sort of pluralistic values and practices that once inculcated make stability likely as O'Leary has typified:

Table 1: O'Leary's factors promoting the failure/success of pluri-national federations<sup>643</sup>

<i><b>Pluri-national federations are likely to fail if:</b></i>	<i><b>Pluri-National federations are likely to succeed if:</b></i>
1) They are established and maintained through coercion	1) They are voluntary unions of constituent peoples
2) They are run by either totalitarian or mono-national authoritarian governments before they democratize	2) They are established as democracies and maintained as democracies

<sup>641</sup>This has been recognized as such even in more unitary and homogenous federal states such as the United States, see the majority opinion in 564 U. S. *Bond v United States* (2011) where Justice Kennedy argues that indeed federalism is designed to protect "the liberty of all persons within a State by ensuring that laws enacted in excess of delegated governmental power cannot direct or control their actions...By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power."

<sup>642</sup>O'Leary, "Power-sharing," 71.

<sup>643</sup>Ibid.

<i>Pluri-national federations are likely to fail if:</i>	<i>Pluri-National federations are likely to succeed if:</i>
3) They maltreat nations, especially those situated on the territorial perimeter of the federation	3) They recognize nations and grant them territorial self-government and/or cultural rights
4) They experience severe distributive conflicts over natural resources or fiscal policy	4) They manage distributive conflicts equitably
5) They experience centralizing coups, putsches, or maneuvers that threaten the federation's founding pact	5) They centralize only with the consent of the nations, and they decentralize to solve potential conflicts
6) They have a <i>Staatsvolk</i> that behaves as 1a, 2a, 3a, or 5a	6) They have a <i>Staatsvolk</i> that is sufficiently confident to accommodate minority nations
7) They are strongly majoritarian in the federal government leading to 1a, 2a, 3a, and 5a	7) They share power in consociational ways, especially important when there is no <i>Staatsvolk</i>
8) They have irrendentist and intervenionist neighbors	8) They do not have irredentist and interventionist neighbors
9) “Exit” seems a better choice than “voice	9) “Voice” seems a better choice than “exit”
10) They are economically stagnant or block the development of particular regions	10) They promote economic development

Indeed, these lessons are very pertinent to the ongoing battles over Iraq's federal system, having important implications not just for the short-term stability of the democratization process but for the long-term development of a state capable of surviving the inevitable stress that comes with state-building.<sup>644</sup>

<sup>644</sup>There is much evidence to support O'Leary's position found in individual country studies of new federations. Particularly useful is the work that has been done on India, see Adeney, “Constitutional Centering”; Lijphart, “The Puzzle of Indian Democracy”

However, again as noted in part in previous chapters, O’Leary’s typology is instructive in the Iraqi context but does not fully capture the unique dynamics of the country that make strong horizontal checks on power paramount. In many successful federations, there are institutionalized practices that buttress horizontal checks on the centralization of power through separation of powers principles. These checks are fundamentally buttressed by an underlying democratic ethos that respects toleration and has high levels of interpersonal trust,<sup>645</sup> values that are central to the ability of horizontal checks on power to operate effectively. Only the executive wields the sword, but underlying democratic ethos prevent the executive from fully discarding the room bequeathed to the independent legislative and judicial bodies. This is not the case in Iraq, where the horizontal federal guarantees may be the only check to balance a strong centralizing and popularly elected executive, as the recent history under Maliki has shown. Horizontal federal guarantees thus buttress not only the group rights of those minorities seeking recognition, but play a vital role in the preservation of individual liberty. Unlike separation of powers, horizontal federalism does not rest on the sort of trust in institutions, but is more amendable to the practice of outright power as the only potential counter-balance to power in a society not yet amendable to the underlying democratic values that have been necessary elsewhere. In this regard, horizontal federalism is not a system of trust, especially as practiced in the highly devolved post-modern federal states – it is a system rooted in distrust, designed to ensure respective groups have the opportunity through repeated interactions to build trust over time without suffering the sort of centralization that destroys the democratic experiment in infancy. It is not ideal, but it is functional.

While O’Leary’s typology only hints at this point, it is useful in observing that in order for Iraq to avoid the fate of other failed states, federalism must be maintained in a manner that resists the destructive, coerced centralization of column 1. The way to do so in the absence of supporting democratic values is through strong horizontal guarantees for the only balancing power that exists to resist a powerful executive: the KRG and future regions. Observers should be wary of underestimating how much decentralization this will actually require given the brutality and volatility of Iraq's past.<sup>646</sup> Today, there is very little reason for Iraq's groups to view each others' intentions as altruistic, and this lack of trust (weighed in terms of real risk and historical fact) has important inferences for the independence of Iraq's federal institutions. What could be seen as a

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<sup>645</sup> Inglehart and Welzer, *ibid*.

<sup>646</sup> Studies show that the level of violence deployed in ethnic conflicts, directly relates to the amount of decentralization required to re-establish peace.

guarantee of self-defense in a developed, uni-national, and long-standing federation like the United States, is without merit in a transitional, fluid, ethnically diverse, post-conflict state. Iraqi institutions like the national army and security instruments located in Baghdad for example are not yet seen (or evidenced to be) “national” or neutral institutions in the same way as similar institutions found in developed federations, including long-standing post-modern federations like India.<sup>647</sup> This fact begs for the introduction of strong safeguards to protect regions and provinces from centralizing coups, whereby the use of Iraq's security instruments could be utilized to uphold the rule of one man or group over the electoral proclivity of even large majorities should provinces lose the right to form regions and the subsequent independence to ensure their own maintenance. In the context of post-modern societies, such a recentralization and personalization of state instruments threatens more than the mere federal nature of institutions, but also the legitimacy of the state and its ability to credibly act as representative of the people.

While the boundaries between national and regional governments must be maintained for a federation to survive then, they must also be flexible if they are to survive into perpetuity.<sup>648</sup> This conundrum, between “strength and flexibility, commitment and mutability,” is not easy for any new federation to answer,<sup>649</sup> but tends particularly toward disaster when the consequences for transgression of the rules by one party does not hold serious consequences.<sup>650</sup> Indeed, without the typical institutional safeguards found in developed federations – a vibrant judiciary, developed party system, popular set of democratic and pluralist values – the Iraqi federation's only line of defense in its preservation is the ability of the KRG (and other future regions) to enforce the federal status quo. Obviously, institutions without their own purse strings are, in addition to concerns of identity representation, inevitably vulnerable. This is not only true at the federal level, where the dismal performance of the Articles of Confederation almost destroyed the nascent American experience for example, but also on the level of sub-state institutions. The resources vital to ensuring that the regions can be maintained and the wealth of the nation dispersed fairly across the population, rather than utilized for the objectives of one man/group will go to the heart

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<sup>647</sup> In the context of post-modern federal societies, ‘national’ institutions cannot in fact be ‘neutral’ unless they are also balanced and reflective of the ingrained diversity of their societies. Attempts to sideline one or more groups in the promotion of others, as has been the case in Iraq under Maliki, deeply threatens to de-legitimize and personalize state institutions, driving resistance to them.

<sup>648</sup> Bednar, *Robust Federation*

<sup>649</sup> Ibid 1.

<sup>650</sup> Ibid, 3.

of this ability to resist any effort to once again exclude the vast majority of Iraqis from participation in their own government.

Indeed, Baghdad has been able to accomplish re-centralization largely because it has been the sole recipient of the vast financial resources bequeathed to the state through oil exportation, effectively denying provinces like Kirkuk full access to their share of Iraq's bounty through their exclusion from regional guarantees. The early knee-jerk reaction of some observers to put oil policy solely under federal control to avoid secessionist tendencies in the regions is for this reason more bane than “solution” to Iraq's ills, for it aids the dangerous recentralization of Iraq's wealth and power that lends to the sort of despotism that has plagued its past. It is this recentralization and the threat that it poses to the maintenance of KRG institutions, rather than the opposite, which in fact drives the Kurdish minority back toward rejection of the state or secession.

Iraq's other groups too are progressively realizing that such control threatens the very democratic nature of the Iraqi state by fueling the ability of a strongman to again personalize its coercive force through the accumulation of immense unchecked, opaque profits. As with other natural resource-rich developing countries, oil can be more curse than benefit to its people when control over a few institutions means unimaginable power and wealth, driving destructive competition and coups, as a rich literature has shown.<sup>651</sup> Each state must then develop its own particular response to this challenge based on the expression of its respective societal interests and particular discord as well as pre-existing institutional legacies. The division of natural resources between the Canadian state and its oil rich Western provinces indicates that it is not an insurmountable task to develop a system whereby a region and a federation can *mutually* share in the spoils, while maintaining both independence and unity. This must be the goal in Iraq as well, both to prevent the over-accumulation of central wealth to the detriment of its democracy, or alternatively to provide the regions with so much unilateral control and lack of oversight that the door toward secession becomes more tempting than voice.

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<sup>651</sup>Few subjects in international relations theory are as documented as the resource course. In the early 1980s, prominent thinkers like Sachs have noted a pronounced divergence in development and stability between countries with single-source extractive natural resources like oil and diamonds (Sachs and Warner, “NBER Working Paper 5398”) With mounting empirical evidence that these countries fared poorer than less endowed developing states, whereby from in the period from 1965–98 the developing world outside OPEC countries saw a per capita GDP growth of an average of 2.2% and OPEC countries managed only 1.3% despite the wealth generated from oil exports (Gylfason, “Natural resources, education”), led Auty to coin the effect the “resource course” in the early 1990s (*Sustaining Development in Mineral Economies*).

Indeed, there is not much Iraq can do to address its unfortunate historical and geographic legacies that push it towards the instability of the first column (see 8a/9a), but there is a lot that can be done to avoid falling over the abyss by adhering to the other conditions within the control of its governing partners for the principles in the table are highly interdependent and mutually supportive.<sup>652</sup> While the attempts outlined in the previous chapter to render the constitutional stipulations requiring coordination between federal and regional institutions on natural resources exploitation void clearly threaten to push Iraq toward forced centralization, the implications are in fact much broader. These attempts, as the previous chapter indicated, have also threatened to splinter the Iraqi Army and instigate conflict between Kurdish *peshmerga*, local security agents, and federal troops, driving Iraq toward the dangerous resource allocation conflicts outlined in column 4a. Impending resource conflicts are in addition evident in attempts to deny the KRG its fair constitutional share of overall revenue, and have been compounded by further jockeying in line with the dangerous drift in column 3a to deny federal rights to both Kurds and Sunni Arabs seeking to move from provincial to regional status. Most pertinent to this examination are the denial of Article 140's process to adjudicate Kirkuk and disputed territories in a manner that represents the will of their peoples and recognizes their distinct nationalities (though not necessarily through full inclusion in the KRG). Instead, every effort has been made to keep Kirkuk and the disputed territories fully under the thumb of Baghdad, with a concomitant denial of their nationalities, distinct history, or popular desires. In seeking the reification of Iraq's gerrymandered dictatorial boundaries, specifically designed to deny any recognition of its diversity and in fact to destroy it, the Maliki government is setting the Iraqi state on a dangerous collision course once again with its own society.

Of course, this is not to say that Iraq's outstanding issues should be approached with a one-size-fits-all mentality. While it is clear that some level of independent regional control and federal-regional coordination must be maintained to counteract these destabilizing tendencies, the execution of constitutional stipulations is an inherently political matter that will be determined by a delicate interplay between Iraq's respective communities. All federal systems are open to evolution that fundamentally affects the initial calculation of power centralization. This is especially true in federations, which by the very nature of their basis in a compact between groups institute and legitimize diverse avenues of authority and are thus open to change. These changes

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<sup>652</sup> O'Leary, *ibid.*



often happen without formal constitutional modifications, and any historical sketch of federations readily reveals the fact that “every federation has changed over time, often in ways that would have surprised their founders.”<sup>653</sup> However, such an evolution must happen organically through negotiations over time in a manner that does not impose the will of the strong on the weak.<sup>654</sup> As Iraq grows and matures past its federal infancy, it too is likely to follow the path of other federations in moving from a pre-occupation with unity and security to more high order goals,<sup>655</sup> but in order to do so it must first show the short-term flexibility and strong checks necessary to hold the state together and overcome the historical impetus toward forcible recentralization.

In the end then, regardless of the exact parameters of the resolution over both the status of disputed territories and exploitation of Iraq's vast natural resources, the key contribution to the future stability of a democratic, peaceful and prosperous Iraq will be the preservation of the general spirit of the federalist stipulations set out in the Iraqi Constitution. As both the foundational document for the ongoing existence of the Iraqi state and the result of carefully negotiated compromises between its respective peoples, any attempt to unilaterally annul provisions would fatally undermine the nascent respect for the process of inter-communal negotiation and rule of law in the new Iraq. It would signal that Iraqi lawmakers are free to pick and choose which constitutional mandates would be followed and which would not be<sup>656</sup> without due consultation, acting extra-judicially to favour some interests over others and violating the spirit of continued negotiation foundational to the successful practice of post-modern federalism. These sorts of actions would be reminiscent of the Iraqi paper tiger constitutions of the past, which clearly failed to establish a broad state-building exercise for the Iraqi people. Recognition of this fact does not mean that federalists, led by the KRG *or* centralists like Prime Minister Maliki, will get everything they want in the final interpretation of the details, but rather that the Constitution's focus on the preservation of alternative sources of authority and power must be preserved in order for federalism to thrive (and its promise for Iraqi state-building to be realized) and the particularities worked out between parties in a manner that preserves realms of significant and consequential sovereign power for all. The following sections identifies the problems with the Maliki-Sharistani proposals, acknowledging that within the realm of possibilities none of the

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<sup>653</sup>“Choosing Federalism,” 6.

<sup>654</sup>This is the rebuttal to the argument that pluri-national federations have a terrible track record and are prone to disaster, Snyder, *From Voting to Violence*, 327. Many have been very enduring, McGarry and O'Leary, *op cit*.

<sup>655</sup>Bednar, *ibid*, 63.

<sup>656</sup>*ibid*, 1567

major Iraqi constituents will achieve their optimal outcome in the short-term, but that in preserving Iraq's federalist character the ground will be laid over the long-term to establish a strong, capable, and democratic state that can potentially serve all the Iraqi people.

### **The Outline of a Constructive Agreement**

The final status of the disputed territories and the issue of oil in Iraq will be central to preserving Iraqi federalism. As noted earlier, Iraq's vast oil wealth is almost the sole source of funding for its governing institutions. While it currently has around 11% of the world's proven oil reserves, only 17 of 80 oil fields have been developed with many likely finds unexplored due to the instability and conflict that characterized its tumultuous history.<sup>657</sup> Thus, the issue of how these proven and potential reserves will be managed, collected, and divided between its respective governing institutions will largely determine how viable its institutions will be at defending against potential rivals from within and outside the state. Kirkuk and the disputed territories, both because of their own oil resources and as part and parcel to the maintenance of representative sovereign authority and national identity outside Baghdad, are also critical to this process.

As the previous chapter outlined, the ongoing federal conflicts over these two issues between the Maliki-led government and the KRG have clearly reached a 'hurting stalemate' which should open opportunities to move toward resolution.<sup>658</sup> At the inception of the Iraqi federal system, the KRG demands threatened the healthy integration of Iraq's Kurds into the new state in seeking unilateral control over their own potentially vast oil resources, without any central management or oversight. Coupled with the potential full incorporation of Kirkuk into the KRG, the centrifugal tug of Iraq's federalist society may indeed have been too much for the state to bear. However, as the ensuing discussion demonstrates, through both constitutional and later negotiations the KRG has in fact given enough ground on these issues to safeguard the federal regime from any such attempts, agreeing to federal oversight and dispersal of all Iraqi oil revenue and a special relationship with Kirkuk. These capitulations effectively address any lingering fears that federal institutions will enable Kurdish or other secessionism to successfully springboard,<sup>659</sup>

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<sup>657</sup>Kumins, "Iraq Oil" 1-2.

<sup>658</sup>Zartman, "Conflict and Resolution"

<sup>659</sup> The oil compromises that are laid out in subsequent paragraphs are well documented, the issue of Kirkuk however is much more sensitive and the exact outlines of proposals have been subject to obfuscation by both parties. While the KRG has made important compromises on the issue, the public pronouncement of these deals prior to final settlement would undermine its negotiating power and also infuriate the Kurdish public as a mere

and leave the outstanding threat to the preservation of the Iraqi state in the hands of its would-be-centralizers.

The failure to move forward then stems largely from lingering confusion of centralization as solely commensurate with unity and state strength among some elites and the desire by those in control to prevent any dispersal of power outside Baghdad. Under the right institutional context, allowing for the sort of dispersal of power that also protects the state from its own inter-rivalries and destructive competition affords Iraq the opportunity to create a broad state-building exercise. However, it also requires an important break from the politics of the familiar. Without such institutional change to reflect and preserve regional authority, the shallow nature of key democratic values such as power-sharing will threaten not only Iraq's minorities but the entire democratic state. Indeed, it took many observers too long to recognize that the Prime Minister's abandonment of federal principles was only the first step in an effort to consolidate power around a single post in Iraq. This should have come as no surprise given how vital federal protections are to the preservation of diverse avenues of authority and power, acting as the only serious safeguards to the encroachment of unwanted rule from a majoritarian (or even minor-itarian) rule from Baghdad.

Indeed, Maliki's coalition has adeptly capitalized on lingering exaggerated fears (given the geo-strategic pull of inclusion in Iraq for all of its communities) that the KRG or a future southern region could use oil resources to form the basis for a secessionist state to successfully muddy the facts of the ongoing conflicts. Falsely claiming that comparable resources have universally belonged to central sovereign authorities elsewhere, the implication has been that any shared or devolved responsibilities proposed by either Iraqi technocrats or rival parties will consequently go beyond past precedent and threaten Iraq's unity. In fact, federal states have never maintained a clear pattern in the exploitation of natural resources<sup>660</sup> between different levels of government, with states with unequal natural resource distribution such as Canada having successfully allowed provinces to control their vast oil wealth (including exports) and others like Sudan executing

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further capitulation by their leaders with no immediate benefit. Documents passed between the parties, however, have in fact laid the foundation for a viable compromise on Kirkuk, with Kurdish agreement to a special relationship that both enshrines significant minority power-sharing and an ongoing special relationship between the province and Iraq, Interviews with Iraqi Officials, January 2010.

<sup>660</sup>Anderson *Federalism*, 25.

revenue-sharing formulas to account for discrepancies between regions.<sup>661</sup> These successful models have been the basis for KRG/technocratic proposals on the issue, which have repeatedly advocated a division of authority and resources to both ensure effective management and prevent unilateral moves by *either* party that could harm the overall interests of the Iraqi state.

The issue has been purposefully misconstrued though to drive internal and external opposition to the Iraqi Constitution as the final arbitrator of its political conflicts in order to undermine the checks and balances inherent to the system. In fact, the laments of Iraqi observers have ranged in tone from the exceedingly misleading description of the law as a “punitive” exercise against the resource-poor Sunni Arabs<sup>662</sup> to attempts to argue that it would fatally undermine the ability of the federal government in Iraq to survive, despite the fact that the 2007 oil law preserves a large degree of central power and oversight over the industry above and beyond safeguards found in similar resource-rich states. The KRG has indeed gone much further than many other federal units in ceding control to the central government via the 2004-2007 interim negotiations, allowing all revenue to be collected and dispersed centrally. This ensures that no region could use the funds to hoard Iraq's oil wealth to the exclusion of others, since the federal government will alone collect and disburse with the revenue from all fields based on an equal division of the spoils. The implementation of this coordinated effort and the resulting equitable dispersal of Iraq's oil revenue has not been impeded because of genuine concerns that they will result in the unequal distribution of Iraqi oil wealth, as Maliki has attempted to claim,<sup>663</sup> because neither the Constitution or the bill simply offer regions the sufficient authority over revenue to do so.

The actual facts of the proposals are best clarified then by looking at the wording of the federal compromises and subsequent draft oil law as constituting either a centralized, dualist, or integrated division of power, as Anderson partially typifies.<sup>664</sup> As previously outlined, a centralized vision would essentially destroy Iraq's nascent federal character because of the vast preponderance of revenue accruing from this single source. While perhaps appropriate in some

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<sup>661</sup>Assymetrical relationships are extremely common in modern federal practice, found in Canada, Malaysia, India, Russia, Spain, Belgium, Comoros, Bosnia and Herzegovina, and St.Kitts and Nevis, *ibid.* O'Leary and Anderson both make this point regarding other federal states, but the typology used here is Anderson's, though his conclusion varies from those presented here.

<sup>662</sup> Makiya, “Present at Disintegration.” Makiya is a well-known intellectual of Sunni Arab origin.

<sup>663</sup>For example, Meijer, “Sunni Factions and ‘Political Process,’” 99: The constitution failed to “guarantee an equitable distribution of oil.”

<sup>664</sup>For a definition of dualist and integrated models of federal exercises of power, Anderson, *Federalism*, 20.

federal states with a more balanced revenue stream, in Iraq such a system would merely strip the regions of any ability to maintain against federal encroachment. History has shown that even in federal states that initially envisioned a weaker form of centralized government the coalescing of much smaller percentages of fiscal resources at the federal level has allowed the federal government to trump constituent authorities and encroach upon reserved powers. Sometimes this has occurred in a benign manner, but more often in ways that threaten the founding compact of the state. This has been the case in states with varied and developed economies like the United States, which are inherently difficult to centralize given their complexity, but would be all the more dangerous in a state as uni-dimensional as Iraq. Yet, this continues to be the model indicated in revisions made by Sharistani to the draft law, whereby the Prime Minister would not only appoint the relevant Cabinet in charge of negotiating contracts but also the Commission responsible for federal oversight. The regions would maintain no control over the form of the contracts, the drafting of regulations for procurement, or the collection of the resulting revenue, stripping them through the unilateral appointment by the Prime Minister not only of their intra-state federal guarantees afforded in the Iraqi Constitution, but also their inter-state participatory rights.

However, this is not to say that the dualist model originally argued for by the KRG (and arguably weakly implicated by the Iraqi Constitution) also holds the solutions to Iraq's ills. Again, given the nature of the Iraqi state's profound dependence on oil revenue (in contrast to more varied economies like Canada) and the unequal dispersal of it across provinces, a dualist model would clearly hold its own secessionist risks. Although the relevant constitutional provisions have rightly been described as "both just and gradualist" in distinguishing between new and old fields to ensure only an eventual and slow decrease over the long-term in revenue for the central state,<sup>665</sup> the dualist model could potentially severely curtail the ability of the federal government to ensure an equitable distribution of the Iraqi state's wealth and inhibit its important oversight role in the future. With the possibility of a southern region forming should the oil-rich southern provinces be excluded from governance in Baghdad and Kirkuk join the KRG, the prospect that 90% of the federal budget could reside outside of its immediate control would clearly present an existential threat to the survival of a central state.

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<sup>665</sup> Estimates in fact have at least 80% of Iraqi oil revenue still coming from already existing oil fields well into 2028, meaning that the regions would only eventually come to hold significant sway over revenue decades from now even under the original formula, O'Leary *How to Get Out*, 130

This model has been largely abandoned by the KRG though in favor of an integrated approach in the 2007 law, which secures a central role for the collection, oversight, and distribution of Iraq's oil wealth.<sup>666</sup> In agreeing to the law, the KRG has conceded concurrent powers over oil, but has continued to resist departing so far from a integrated division of power over the industry in subsequent revisions that the vitally important intention of the original dualist vision to counteracting resource-fueled despotism is completely lost. The revision toward a more integrated model in fact represents a profound effort to offer the central government the necessary re-assurance that the KRG's oil wealth will not be used to instigate secession. Great pains were also taken to address distribution fears,<sup>667</sup> with Kurds repeatedly and publicly agreeing to a formula for the collection of revenues that either utilizes international safeguards to ensure full delivery of payments evenly throughout the country or for the money to be collected centrally and then distributed according to population, including not only the constitutionally-mandated existing fields but also any new discoveries.<sup>668</sup> Given these capitulations, ongoing disagreement over Iraqi oil thus has much less to do with a genuine fear that some areas will use federalization to ensure they prosper at the expense of others, and much more to do with the refusal to allow any dispersal of authority to the regions.<sup>669</sup>

Where the KRG/federalist contingent has shown more outward reluctance to go beyond constitutional compromises has been on the issue of Kirkuk's status vis-à-vis Baghdad, but even here the KRG has given the necessary ground to address any secessionist threat. The most systematic attempt to analyze the Kirkuk issue by Anderson and Stansfield<sup>670</sup> is illuminating on this score. The scholars rightly point out that a game theoretic charting of the various group's preferences reveals that any compromise must entail either a decision for Kirkuk to retain a special status outside of the KRG or for it to join the KRG with clear power-sharing guarantees

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<sup>666</sup> Interview with KRG Officials, Jan 2012.

<sup>667</sup> Interviews and knowledge of negotiations, Jan 2012

<sup>668</sup> While some of these concessions have been made publicly, others have been made in private correspondence between Maliki and Kurdish representatives, which the author has been privy to.

<sup>669</sup> The KRG-technocratic proposal for the 2007 law by allowing the recentralization of control and granting veto power based on proportional representation in an power-sharing council and strict stipulations, is in fact now at the bare minimum of what can be negotiated to ensure widespread participation and representation for Iraq's varied socio-political interests. The Iraqi state would in fact be better served by demanding that processing of payments and disbursements occur through an internationally supervised trust in order to prevent the possible Prime Ministerial impetus toward abusing the lack of reliable demographics to hold the regions hostage.

<sup>670</sup> This rejects both the proposition by the KRG implied by Article 140's full implementation that Kirkuk unilaterally join the KRG on equal footing as the other 3 provinces and duly the desire by centralists and some Kirkukis that it remain wholly under the control over the federal government, Anderson and Stansfield, *Crisis in Kirkuk*, 185-233.

and a special status.<sup>671</sup> This dismisses the preferred option of either the Maliki contingent to re-incorporate Kirkuk as a stand-alone province by ignoring the assumed-majority's desired expression of their Kurdish nationality, and also the KRG's preferred outcome to unequivocally incorporate Kirkuk into the KRG without dual respect for the distinct national character of its minority inhabitants. Neither of these preferred outcomes could indeed meet the charted requirements for stable post-modern federation, threatening either the Kurds or Kirkuk's other groups with forced majoritarian rule and denying deep, widely held national identities.

The proposed compromise solutions that avoid this outcome mean that Kirkuk becomes in essence, a "federacy within the Kurdistan Region,"<sup>672</sup> or alternatively that it remains outside of the KRG but subject to typical majority-rule that would likely mean that the Kirkuki Kurds would be in charge of the governorate. In the first scenario, the Kurds would be relinquishing some of the unity of their administrative system and control over Kirkuk, in return for recognition that is was indeed a part of the historical Kurdistan. In the second, the Arabs and Turkmen would get to stay outside of the control of the KRG, but would lose much of their say over their own governance under the majority rule of the Kurds, for power-sharing could only be mandated by either an agreement between Kirkukis or through amendment to the federal constitution which the Kurds could veto, neither of which Kurds would agree to without receiving something in return.<sup>673</sup>

When broken down in this manner, it becomes exceedingly clear that the vast preponderance of Kirkukis would benefit from choosing the first option over the second, and that it is the preferred option for bolstering Iraq's nascent federation as well. In the second, not only would non-Kurds be subject to majoritarian rule by the Kurds that has caused renewed conflict in other post-modern states, but they would also be significantly limited in ensuring that the province receives its fair share of the overall Iraqi budget. This would extend as well to policy on important cultural and communal resources, for communities like the Turkmen can at best hope to remain very minor partners in large governing coalitions at the federal level given their numerical inferiority across Iraq. Only the regions receive constitutionally-mandated block grants based on population, and it is the federal government that determines from there how to disburse with funds among the provinces. Its record at doing so as long as Kurds sit atop the electoral structure

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<sup>671</sup> Ibid

<sup>672</sup> Ibid.

<sup>673</sup> Ibid.

is dismal, and most observers agree Kurdish electoral success is the most likely outcome of any elections for the foreseeable future in Kirkuk.

A negotiated dual-relationship by contrast has had a clear record at setting the stage for cooperation between warring groups by introducing external security guarantees, addressing identity concerns by offering inhabitants more than one option to choose from, and ensuring a stabilizing external role for patrons to protect guarantees for all relevant parties.<sup>674</sup> The most obvious example of this can be found in the Northern Ireland-Ireland-United Kingdom deal which introduced a novel role for Ireland to bring balance to the Catholic-Unionist conflict, recognizing the historical, cultural, and religious ties of North Ireland's Catholics to Ireland without removing it from the United Kingdom. The same type of principled deal, which could allow Kirkuk to join the KRG in an asymmetrical way (as compared to the full and unilateral incorporation of the 3 predominately-Kurdish provinces that now constitute it), with significant guarantees of power-sharing for its minorities ensured by ongoing institutional relations with Baghdad, could offer the same sort of stabilizing influence for Iraq's effort to devolve sovereign authority from the center.

In fact, there has been movement toward acceptance of such a special status among Kirkukis. While Arabs originally demanded that Kirkuk remain under central government control, in May 2006, they joined the Turkmen members of the Kirkuk Council to demand a referendum on a special regional status for Kirkuk.<sup>675</sup> Sunni Arabs' continued disenfranchisement from the central government in Baghdad have emboldened Sunni-majority provinces in Nineveh and Diyala to petition to establish federal regions of their own and claim the autonomy granted the KRG. This is rooted not so much in an understanding among Iraqis [Arabs] nationalists "that, if they want security to the north, they have to compromise with the Kurds,"<sup>676</sup> but rather with a re-alignment of interests within the new democratic institutions that has led many Sunni Arabs to recognize that in a democratic system, they will most likely be unable to topple Shia Arab control over the central government. This opens the idea that their best interests might be better served in taking ahold of their own governance, an extremely positive sign for the resolution of the Kirkuk issue which has been largely hindered by the previous rejection among the majority of Iraq's Arabs of federalism writ large. While Sunni MP, Osama al-Najafi in 2009 was ready to discount haphazardly the suggestion in the UN report on Kirkuk that the region should be jointly

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<sup>674</sup> This has been upheld in many UNAMI documents

<sup>675</sup> "Turkmens Propose Making Iraq's"

<sup>676</sup> Cordersman quoted in Pessin, *ibid.*



administered as “unjust and one-sided,”<sup>677</sup> the new movement in much of Sunni Arab Iraq and reliance on Kurdistan peshmergas for protection from the Iraqi Army units under Maliki has shifted the calculus dramatically.

Iraq’s Turkmen have also become more moderate in their stance, with several prominent Turkmen having left the ITF and establishing closer relations with Kurdish parties, demonstrating the potential for compromise given the right power-sharing guarantees.<sup>678</sup> These movements are the start of an acknowledgement that entry into the KRG under the above model would mean special treatment and access to resources not afforded to their community by the federal government or their fair electoral weight.<sup>679</sup> In fact, one of the traditional stumbling blocks to resolving the Kirkuk issue has been a reluctance by minority communities to accept positions based on their own established popularity and numerical prominence, namely through electoral results. Both Arabs and Turkmen have repeatedly cried foul over Kurdish domination of Kirkuk in ways that do not hold up under close statistical analysis.<sup>680</sup> Power-sharing that legitimizes their concern for an important stake in their own governance, beyond narrow considerations of electoral results holds potential to address the concerns represented in these claims.

The KRG has duly recognized that any peaceful solution in Kirkuk must in fact be led by such negotiations, which would offer important guarantees to other communities. President Barzani has openly stated that even should Kirkuk vote to join the KRG, it would still (of course) remain an Iraqi city,<sup>681</sup> and has grown <sup>682</sup>progressively closer to other protagonists, including those most opposed initially such as Al-Hadba. More than words will clearly be needed to re-assure Kirkuk’s minority communities, but power-sharing is not new to the KRG, which has already shown a capacity to divide power between former rivals in its internal politics above-and-beyond electoral considerations, alongside absorbing large numbers of Christians from other parts of Iraq.<sup>683</sup> Guarantees for Kirkuk’s more ingrained and prominent diversity will of course need to go further. The Kurds must accept that they will have to relinquish some central control over the

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<sup>677</sup>Nuajafi even at this time showed a profound ignorance about what he was talking about, lamenting that it was unfair because it compared the situation of Iraq and Kurdistan to that of Northern Ireland and the UK as though Iraq-Kurdistan were two separate countries. Chulov “Kurds Lay Claim to Oil”

<sup>678</sup>Including, the Independent Turkmen Group and The Turkmen Democratic Movement

<sup>679</sup>Dawde, “New Strategy for Turkmen”

<sup>680</sup>Anderson and Stansfield, who looked at the administrative and security posts based on ethnicity and found that while Arabs are often over-represented, Kurds have not been, *ibid*.

<sup>681</sup>Interview, Apr 2005.

<sup>682</sup>Quote by President Barzani in Khalaf, “Kurds Look Anxiously”

<sup>683</sup>Salih, “Kirkuk: A Constitutional Issue,” 2.

governorate under the KRG Constitution in order to make room for Kirkuk, which they have indicated a willingness to do in negotiations dating back to official responses to secret UNAMI proposals in 2008.<sup>684</sup> This will most likely demand constitutional protections that exempt Kirkuk from many of the powers that the KRG Parliament holds to redistrict governorates or prevents the unequal privilege of some governorates over others internally. In fact, the Kurds have already publicly tabled discussion of whether Kirkukis could have a referendum that gave them the option of joining the KRG, becoming an independent region, or even joining another region.<sup>685</sup> The institutionalization of such a resolution would greatly enhance nascent federal and power-sharing values in the new Iraq, and go a long way to re-assuring its minorities that they will be represented in new regional institutions. A grand bargain which combines such a special status for Kirkuk with an integrated model for the management of Iraq's vast oil wealth between the regions and Baghdad will set the Iraqi federation on course to inculcate the sort of values necessary for a widespread, inclusive state-building exercise.

### **The Importance of Federation**

There is little doubt that the future of the Iraqi state will hinge on the adjudication of the outstanding issues over oil and territory between the federal government and KRG. As the Iraqi Army rebuilds itself and the Kurds face the prospect of steeper losses down the road should they allow the status quo to remain, the possibility that Iraq's experiment with the peaceful resolution of long-standing internal conflicts will surrender to its perpetual demons becomes more likely.<sup>686</sup> Without resolution, the respective communities inch ever-closer to war. Already Kirkukis are leading different lives, enclosed in ethnic neighbourhoods and attending school at different times in different languages. The harbingers for a brutal and bloody war are growing from a past where those in mixed communities commingled and learned one another's languages, in Kirkuk today, youth describe growing up with "no Arab or Turkmen friends...only Kurdish friends..." unable to communicate across a widening cultural and linguistic divide.<sup>687</sup> With the Kurds already armed,

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<sup>684</sup> More public reassurances were granted in the attempt to pass a KRG Constitution, but were delayed due to Arab concerns at the time and external pressure from the United States. The ground for power-sharing has since improved.

<sup>685</sup> Undoubtedly this is at least partially based on the fact that they are sure they can win such a referendum, or any referendum as long as the option is there to join the KRG.

<sup>686</sup> Kaplow, "Other Side of Kirkuk"

<sup>687</sup> Quoted in Raghavan, "Ethnic Divide in Iraqi"

both the Turkomen and Arab communities have progressively taken up arms as well, first in neighbourhood watches and now in the form of pseudo-legitimate Iraqi military encroachment into the area. Violence has correspondingly upticked, with a profound growth in the number of 'martyrs' to the Kirkuk cause across the ethno-sectarian divide. The province's history compounds these growing differences and lends the issue an even deeper emotive connection that renders the situation inherently unstable and resistant to the sort of comforting analysis that relies solely on rationality. Indeed, there is a level of path dependency involved, whereby the decision to fight and the bloodshed spilled over the city makes compromise more, rather than less, difficult with time.<sup>688</sup>

If left to fester, these two issues consequently have a very real potential to deepen animosity between respective parties and encourage extra-judicial moves that will enhance tensions and lay the groundwork for a more retracted armed conflict over the province. Instead of allowing the hostility to grow unabated, there is every reason to believe that both issues can be resolved in a way that will ultimately strengthen the Iraqi state in this critical transitional period. As the previous section outlines, there is the potential to ensure that the KRG will have the necessary financial and institutional independence to defend the existence of Iraq's federal character and preserve the unique Kurdish identity, while also safeguarding the state from the possibility of secession. Reaching such an arrangement through the enactment of federal divisions of power will diminish the incentive to engage in violent jockeying and bolster respect for the legal, institutionalized character of the new Iraqi state. By relinquishing some control over the lucrative oil exportation business, the volatile competition over central institutions between Shia and Sunni groups will also decrease as each instead seeks to carve out positions of power in a much wider field.

All of these benefits are in addition to two additional critical reasons that emerged in the previous chapter. First, the very real consequences in terms of both security and development for the residents of these areas living bereft of a functioning government and under a constant state of war for over a decade now. And second, the dire need to encourage the sort of foreign investment necessary to rehabilitate Iraq's dilapidated oil infrastructure and establish the faith of

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<sup>688</sup>As Chief of Staff to President Barzani describes, it is fine for Iraqi oil revenue to go back to the Iraqi people, because for the Kurds, Kirkuk "is symbolic, its about the injustice that have been done to us. When we think about the situation of Kirkuk, we all feel Kirkuki," quoted in Fitfield, "Kurdistan", this is a very common sentiment. There are numerous very moving songs in the Kurdish language about the plight of Kirkukis, and it is not uncommon to hear rival Arab and Kurdish songs requested in mixed company.

international investors that the country is on the right course to stability and peace. Accomplishing this will be critical to the ability of the Iraqi state to provide the services and security needed to build its legitimacy throughout Iraqi territory. Otherwise, it will likely see already intensifying protests against the regime from a population inspired by political upheavals throughout the region.<sup>689</sup> In fact, Iraq has long struggled to increase oil revenues in league with population hikes, and has seen the most targeted frustration aimed not at its sectarian fringes, but rather at officials in the south that are part of the governing coalition.<sup>690</sup> Available evidence from other federal states indicates that sovereignty-devolving compromises are very difficult to implement when the state is facing budget restrictions, rendering the importance of positively resolving the oil issue and thus increasing the resources available to implement compromises on a range of smaller issues particularly critical.

Of course, the fact that new federalist states often possess high-levels of societal discord does not make the healthy deployment and inculcation of federal values, institutions, and norms easy. Iraq in particular is beset by a host of common problems. As documented, chief among these and consistent with most post-conflict societies, are deep areas of mutual distrust between its respective communities stemming from a history of betrayals, coups, and infighting. This distrust has created a classic (in)security dilemma, whereby the respective parties are likely to break with negotiated agreements even when faced with sub-optimal returns out of fear that they will receive even worse returns in the future when the other parties opt for exit or coercive action. On the Kurdish side, is the fear that (as has repeatedly happened in the past), once the central government under Arab leadership has regained the necessary strength, it will abandon its promises of decentralization and seek to reclaim complete hegemony over its territory. On the flip side, amongst both Sunni and Shia Arabs is a concern that adherence to the federal compromises will lead the already booming KRG into an even wider divide with the rest of Iraq --economically, culturally, linguistically, and politically-- and eventually lay the groundwork for a Kurdish exit from the state that will make Iraq as a whole vulnerable to the designs of powerful neighbours that may wish to dominate its people or natural resources for their own ends.

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<sup>689</sup>The “Arab Spring” uprisings that swept through the Middle East, beginning in Tunisia, were more hushed in Iraq. However, they have taken on a more violent temperament with the passage of time as the population has become exceedingly frustrated with the slow pace of improvements in government services and widespread corruption, see Arraf, “Iraq’s Arab Spring”

<sup>690</sup>Arraf *ibid*, by Mid-May 2011, 3 of Iraq’s southern governors had been forced to resign due to widespread protests around the provision of government services, corruption, and mismanagement.

As argued, state-level and international processes that have mistakenly favoured a unitary view of state-building in the developing world have compounded these issues. Once laid, these belief systems and patterns of behaviour are not easy to transform, resting on an ingrained value system that resists more creative approaches. Iraq's people thus not only hold very different assessments of their interests, but also harbour vastly different intellectual legacies about the direction needed to maintain their unity, security, and statehood. While the Kurds and a growing number of both Shia and Sunni Arabs have embraced the idea that federalism can be used to create a more stable political environment, a hefty legacy still supports the idea that a strong Iraq must be centralized, unquestionable, and institutionally unitary (as well as discernibly Arab). Those Iraqis that harbour this view are supported by an international community that is reticent to see the survival of existing states brought into question, and exhibits a knee-jerk reaction against any suggestion of potential secession.

However, these beliefs are moored in an archaic understanding of early European state-building that is ill-suited to the late-development of conflict-ridden states in the post-colonial developing world, and rests on an overly narrow, shallow understanding of sovereignty itself. When centralism is combined with social diversity and vast natural resources, the impetus for destructive despotism is indeed profound.<sup>691</sup> The quest for a misunderstood strength when weighed against the very real social dispersal of power noted in Migdal's famous thesis<sup>692</sup> fails to acknowledge that the real problem in many late-developing states is actually extreme autonomy from society, ultimately resulting in a predatory state.<sup>693</sup> Indeed, it is the predatory state more than the weak state that has contributed to long-run weakness and instability in places like Iraq.

Despite this fact, nationalists like Prime Minister Maliki are still inclined to view state-building through a logical prism rooted in the same calculation that Mann identified in early Europe, where sovereigns engaged in an unending quest to control critical territory in order to possess the sort of resource-rich territory necessary to extract ever larger sums of both men and

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<sup>691</sup>Even in early literature the French state's ability to use despotic power to control its population was favorably contrasted with the "weakness" of the English constitutional state model, which was characterized by dispersed social power and a consequent reliance on administrative control (Badie and Birnbaum, *Sociology of State*; Birnbaum *Heights of Power*). It was not until much later that this view was overturned by the work of Brewer and Mann who successfully demonstrated "that the English state had a tremendous capacity for extracting considerable sums in taxation and loans, a type of capacity...attributed to the British state's infrastructural power over society (Barkey and Parikh, 529)."

<sup>692</sup>Migdal, *Strong Societies and Weak*

<sup>693</sup>Evans, *Embedded Autonomy* and "Predatory, Developmental, and Other"

money.<sup>694</sup> The predominant method of state-building in the early modern era, its translation into the contemporary setting has revealed a pre-occupation with the “loss of control over critical space” leading to the sort of revenue depletion critical to the state’s administrative capacity.”<sup>695</sup>

While not applicable to many resource-poor modern states, especially in Africa,<sup>696</sup> it is a pivotal concern in oil-rich Iraq. The fear of losing valuable territory has long-driven attempts to centralize political authority and has been the chief motivation historically behind efforts to suppress Kurdish national movements, present even at the foundation of the state. Unfortunately, the fact that this logic has been a major factor in creating “resource fueled despotism” has been well-documented throughout the developing world, whether in relation to diamonds in Africa or oil in the Middle East. In both cases, rentier economies sit above rather than embed within their societies. They rely not on the sort of productive social or economic activity that requires an educated, healthy, and compliant population, but rather on the extraction and export of a single natural resource bequeathed as both treasure and curse. This singular reliance breaks down the usual leverage a citizenry has over its government founded on mutual dependency. Rentier states as have traditionally existed in Iraq, can survive for lengthy periods of time by centralizing wealth and power in the hands of a very few, a fact that both encourages corruption and allows the government to build extensive patron-client relations throughout society. These relationships can be traditional in the sense of a direct relationship between patron-client or much more systemic, involving the large-scale silencing of opposition through state-led welfare programs, extensive subsidies, and coercive measures that eventually bring the population into a relationship of inert dependency on the government.<sup>697</sup> While outwardly strong in terms of coercive and economic power, such a state is “inherently unstable, because it rests [solely] on its ability to continue paying for the loyalty of the population.”<sup>698</sup> It is perpetually vulnerable to sudden crisis.

Rather than perform as Mann observed in early Europe, territory that is both valuable and resistant to control weighs heavily on this innate vulnerability in the Rentier state for the equation

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<sup>694</sup>Mann, *States, War and Capitalism*

<sup>695</sup>Li, “State Fragmentation,” 143.

<sup>696</sup>Herbst, *States and Power*

<sup>697</sup>The concept of the rentier state is now a central part of the discussion of Middle East states, Beblawi, *Rentier State in Arab World*; Beblawi and Luciani, *Rentier State*; Ismael, *Kuwait: Dependency and Class*; For the connection with despotism, see especially Luciani, *Resources, Revenues, and Authoritarianism*; Karl, *Paradox of Plenty*; Ross, “Does Oil Hinder Democracy?” and “Political Economy of Resource Curse”; And for Africa’s broader context of the rentier state, see Jensen and Wantchekon, “Resource Wealth and Political Regimes”

<sup>698</sup>Pederson, “Three Wars Later” p55.

only works if the territory in question can be brought to heel in a relatively short time frame with reasonable expenditure in blood and treasure.<sup>699</sup> When a modern rentier state, like Iraq, instead faces long, sustained, and intense opposition to its expansion, as has proven true of the Kurdish areas, it is more likely to collapse than expand, weaken rather than strengthen.<sup>700</sup> Culturally and territorially peripheral areas like the KRG drain the potential windfalls from resources that form the very core of state control, leading to repeated coups and violence of a scale that eventually threatens state collapse. While the result in previous epochs to this over-extension would have been the destruction of the state and re-ordering of boundaries, the post-modern world allows the state to limp along engulfed in a sustained war against its own population, rocked by periodic coups.

In order to dominate the Kurdish territory, the Iraqi state has traditionally taken on these overburdening, heavy logistical loads that<sup>701</sup> were unsurprisingly fatal to authoritarian rentier regimes. Tilly's classic calculation whereby "states make war, and war makes states," has been turned on its head in Iraq. Like in so many developing states, the unending quest for greater control and centralization created a vicious cycle of despotism, state collapse, civil war, and chaos. Through its over-extension, the Iraqi state became exactly what it sought to avoid, demonstrated in both power projections and social indicators. Once a leader in its region, it became the least developed of its peers, with the majority of citizens unable to access safe drinking water, high infant mortality rates revealing a stark lack of basic government services, and a dilapidated infrastructure unable to support proper economic growth.<sup>702</sup> Nor did it achieve widespread external respect for its sovereignty, unable to defeat its rival Iran even in the midst of the other's revolutionary turmoil, and engaging in internally-destructive external wars that peeled off its coercive facade.

It is this same battle that tragically rages on today in Iraq, between a failed vision of unity and the promise of federalism.<sup>703</sup> The lessons of the past are clear, a centralized Iraq has weighed heavily on the vast majority of Iraqis, bereft any role in their own governance. While the institutionalization of federalism cannot alone cure all Iraq's ills or tendency toward despotism, it

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<sup>699</sup>Lake and O'Mahony, "Incredible Shrinking State"

<sup>700</sup>A fact that has been found to be true even of early modern European states that overextended themselves

<sup>701</sup>Stinchcombe, *Constructing Social Theories*, 276-277.

<sup>702</sup>By 2000, Iraq was second only to Yemen as the least developed Arab state, United Nations Development Program, *Human Development Report 1990*, 22.

<sup>703</sup>Distinct from, but related to what O'Sullivan calls "territorial" and "missionary" power, *Geopolitics*

provides essential checks on the designs of would-be oppressors and lays the groundwork for a more resilient government founded in widespread social legitimacy. Indeed, the pronounced threat that an overweening, unchecked sovereign could have drove the Kurds and their Shia allies to originally negotiate a very different vision for a democratic Iraq. Both long-time victims of machinations in Baghdad, they crafted a system which established a decentralized regime to govern oil and allowed for the possible establishment of a powerful pan-Kurdish region encompassing Kirkuk. This vision rejected a shallow understanding of state-building and state strength, codifying devolution of power and recognizing different sources of legitimacy in an effort to allow the state to expand its reach through them, rather than force their destruction in order to assume their place.

While these compromises were at points intentionally vague, reflecting both lingering desires among some for re-centralization (including external overseers) and acknowledgment that the very foundation of successful post-modern federalism rests on flexibility and perpetual negotiation between contending social components,<sup>704</sup> the transformative potential was clear. State-building theory has long held that stable political communities must be grounded in “the establishment of defensible units, internally pacified and [with a] hard-shelled rimmed.”<sup>705</sup> Even under oil-fielded despotism the Iraqi state has never (and cannot) accomplish this reality as a centralized, unitary state. Overly centralized states with restrictive national narratives characteristic of Iraq's past, isolate segments of their population, destroying any potential to overcome the ignominy of their birth and achieve the sort of common social purpose and cohesion necessary for developmental benefits and stability. Indeed, the most important and critical distinction between strong and weak states in the post-modern world is not based in military strength, but in socio-political cohesion, whereby “anarchic states possess neither a widely accepted and coherent idea of the state among their populations, nor a governing power strong enough to impose unity in the absence of political consensus.”<sup>706</sup>

The development of federal units has finally integrated the Kurdish areas into an institutionalized system of power-sharing that offers a very real possibility to build just such an Iraqi state capable of projecting power throughout its territory and maintaining widely-held social

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<sup>704</sup>Heisler and Peters, “Scarcity,” 332.

<sup>705</sup>Herz, “Rise and Demise,” 483. As Hinsley famously noted, as powerful as sovereignty is as a concept, in the end, “Men do not wield or submit to sovereignty. They wield or submit to authority or power, Hinsley, “Concept of Sovereignty,” 242.

<sup>706</sup>Buzan, “People, States, and Fear,” 17.



legitimacy. This vision should not now be abandoned under the headiness of fleeting electoral success. The Maliki regime has fallen prey to the same sort of damaging pattern that existed prior to Iraq's democratic regime, which Riggs' has dubbed "prismatic behavior," which seeks to accommodate contradictory norms, like respect for the rule of law and universal rules for equal treatment, while engaging in corruption and favoritism for the benefit only of friends, supporters, and co-ethnics to the detriment of competitors in different communities.<sup>707</sup> While some contestation is still expected, even healthy in post-modern states, the gradual weakening of support for Iraq's federation amongst those in power in Baghdad stands in defiance to the most basic logic of state-building, where history has shown repeatedly that the "imposition of greater centralization or authoritarianism is more likely to drive nationalists into the secessionist camp than it is to preserve national unity."<sup>708</sup> Those states that have heeded the desire for greater autonomy and power-sharing, bending institutions to ensure that rivalries can be resolved within the system, have survived in spite of the existent social pressures on them to dissolve.

Iraq has in fact undergone a profound shift in favour of federalism amongst all but a determined group surrounding Prime Minister Maliki. This is not surprising or new for Iraq, which as this dissertation has argued, is best served by a federal system that can accommodate the deep differences in opinion amongst its respective population groups. This fact has always been resisted by those currently in power, but unanimous amongst the rest of Iraqis. However, like those regimes before, the Maliki government is now facing down the collapse of control in Baghdad due to intransigence on these issues and the over-centralization of power.<sup>709</sup> While authoritarian attempts to force centralization have failed, so too will attempts to do so under democratic auspices meet profound resistance regardless of the majority status or sectarian colouring of those in control. Unable to deny Kurdish identity without force, the new Iraq must therefore be founded in the logic of a "federalist bargain," whereby "politicians who offer the bargain" accomplish their desire to expand their territorial control, and those that accept the

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<sup>707</sup>Riggs, *Administration in Developing Countries*

<sup>708</sup>Marchildon, "Postmodern Federalism," 441.

<sup>709</sup>There has been a long-standing effort to unseat Prime Minister Maliki that has largely been blocked by the Kurds. Beginning in 2012 however with the American exit, the movement has gained pace and with the addition of the Kurds and Sadr Movement, has mustered the votes for a non-confidence removal of the government led by Prime Minister Maliki. At the time of writing, President Jalal Talabani (a Kurd) has blocked the proposal's movement into Parliament for a final vote, but was facing increased pressure from all sectors and even threatening to resign himself over the matter, Ahmed, "Maliki's Opponents Try New Tact"

bargain solidify an opportunity to peacefully engage in their own governance,<sup>710</sup> before it drives the Kurds into renewed secession.

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<sup>710</sup>Riker, *Federalism: Origin, Operation*, 12.

## CONCLUSION

### Re-building the Iraqi State

*Just as Iraqis have not found a way out of the chronic instability that has plagued their nation, so have outsiders faced tribulations...Neighboring countries have been damaged by their conflicts...The international community at large has also met failure.<sup>711</sup>*

Over three decades ago, Hedley Bull argued in *The Anarchical Society* that the primary historical goal of international society was the preservation of the state system. Today, as in the past, that survival is facing a host of challenges, both from the failure of many recognized sovereigns to establish effective state-building projects and the rise of a set of state-like entities that lack traditional juridical sovereignty but are grounded in an empirical sovereignty often beyond that of the recognized states in which they are located. Best described by Pegg as “defacto” states, these political entities undermine the central principle of international law, grounded in the rights of recognized, territorially-bound sovereigns to complete authority over their own jurisdiction. The conundrum for international society is how to harness the potential of some of these defacto states to contribute to order in regions of the globe where states are so weak that their continued existence is dependent upon foreign mercenaries,<sup>712</sup> never-ending contributions of external support,<sup>713</sup> or despotic deployments of profound coercive force, without opening the destructive potential of a wholesale re-ordering of state boundaries.

Using Iraqi Kurdistan as one example, I have argued the most promising path toward doing so in some cases is through an evolution of state-building norms and practices, whereby the impetus in the developing world to strive for the elusive centralization of the Unitarian Weberian state as it has been understood is discarded in exchange for decentralized, post-modern federalist arrangements. Federalism that reflects existing societal cleavages allows the state to incorporate rather than contest pre-existing federal societies and is better suited to state-building in places that have profound social cleavages like Iraq. This resolution requires reliance on an old lesson that rulers have been forced to recognize “that their effective control can be enhanced by walking away from issues they cannot resolve.” The outcome of such actions is not a weakening of authority, but instead a strengthening of political stability found through a limitation to realms

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<sup>711</sup>Rowswell, Bouillon, and Malone, “Looking Back: State Fragility,” 3-4.

<sup>712</sup>Shearer, “Outsourcing War”

<sup>713</sup>Simmons, “Learning to Live with NGOs”

that can be effectively managed and controlled.<sup>714</sup> The core of the bargain between the Kurds and the Iraqi state thus resides in a similar acknowledgment that despotic power has failed to bring the imagined Iraqi state into being throughout its territory, and the concomitant recognition that the new federalist institutions will likely enhance the infrastructural power and capacity of the Iraqi state by incorporating social and political power that has long contested its existence into state institutions.<sup>715</sup>

Rather than holding on to a perception of the modern state, which was “a unique social invention devised to solve the specific crises of the western European societies at a particular point in their development,” the construction of political order throughout Iraqi territory consequently requires a state-society bargaining process that recognizes the inherent limits of the state project.<sup>716</sup> This bargain must reflect the fact that the logistical costs of controlling territory removed from the central ethno-cultural hub of the state is subject to an extreme form of the law of diminishing returns,<sup>717</sup> amplified by the different socio-economic imperatives of late-developing nations that prevent the sort of coerced ethnocide of earlier state-building.<sup>718</sup> The consequent repeated attempts by past Iraqi regimes to build a unitary, centralized state unsurprisingly demonstrated this fact, leading only to further socio-political fragmentation which eventually challenged the very existence of the state itself. While federation may not be the most efficient form of sovereign governance available, it is the most likely to hold Iraq together and create the sort of stability so desperately lacking from its history. The previous chapter argued that such a plan is best attained through a grand bargain that resolves outstanding disagreements over federalist principles between the center and regions with an eye to preserving the independence of sovereign institutions at both levels. This independence of resources and clear lines of authority will enable the Iraqi state to resist the historical impetus toward despotic centralism that has been its greatest demon.

However, the lingering desire to achieve the sort of overweening authority associated with the traditional Weberian state and ongoing distrust between different societal elements, characteristic of states where one group has a long, bloody track record of deploying state resources to the exclusion or oppression of another, makes success unlikely without a supportive

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<sup>714</sup>Krasner, 2001, p24.

<sup>715</sup>The distinction between despotic and infrastructural power is made by Evans, *ibid*

<sup>716</sup>Badie and Birnbaum, *Sociology of State*

<sup>717</sup>Collins, *Weberian Sociological Theory* and “Prediction in Macrosociology”; Boulding, *Conflict and Defense*

<sup>718</sup>For the role of capitalism’s development in conjunction with the first states, Wallerstein, *Modern World System*

commitment by the international community of states to provide the security guarantees necessary to move parties to the negotiating table. The new Iraqi government will face a number of critical challenges as it sets about attempting to construct viable political institutions out of a legacy of conflict. A dearth in human capacity, pervasive corruption, and regional instability will undoubtedly strain newly democratic institutions.<sup>719</sup> These hindrances contribute to miscommunication, undermine power devolution and continue to present the Iraqi regime and those committed to its success with an ongoing array of internal security threats.

As in other developing nations, the Iraqi and Kurdish governments must also be considered “swollen.”<sup>720</sup> Both have huge payrolls that have been estimated to make up between 65-85% of the working population.<sup>721</sup> Most Iraqis thus rely on the government for their livelihood, creating a heightened stake for control over its resources and contributing not only to conflict between the KRG and the federal government, but also stressing state institutions with intra-ethnic competition to assert dominance over lucrative and powerful positions. Those in charge of the government will need to overcome the impetus to avoid accountability, a situation that proved disastrous for previous regimes,<sup>722</sup> and act in the interests of maintaining structures and power outside their immediate control to overcome these problems. Without an active and persistent outside mediation role, success seems unlikely, given the historical proclivities and ingrained practices that must be surmounted.

Indeed, the history of the Iraqi Kurdish conflict makes it clear that a strong pattern has emerged whereby the strengthening of the central government has led to renewed attempts to forcibly incorporate the Kurds into governing structures, indicating that maintaining a federal bargain will at minimum require the fledgling institutions of the new Iraqi state have a chance to take root and solidify the establishment of new norms and patterns of behavior between its respective parties. This process can be greatly aided by providing the sort of security to each side that prevents sub-optimal actions taken out of fear of even worse returns later, such as a move by either party to forcefully assert control over Kirkuk as the power balance inevitably shifts between

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<sup>719</sup>Many politicians and their families express concern off-the-record that they may in fact end up run out of the country in the same manner as Saddam, Interviews, Iraq, May 2008-2009.

<sup>720</sup>Larry Diamond, quoted in Reno, *Corruption in State Politics*, 10; Berg, “Structural Transformation versus Gradualism”; Jeffries, “Rawlings and Political Economy”; Woronoff, *West African Wager*; Killick, *Development Economics in Action*; Lofchie, “Trading Places: Economic Policy”

<sup>721</sup>Internal Government of Iraq Documents, November 2008.

<sup>722</sup>For a discussion on this dynamic outside of Iraq, Walle, *African Economies and Politics*

them. Such active and clear international guarantees have been the key in fact to the end of bloody intercommunal conflicts elsewhere, with a broad-based study of “nation-building” operations finding that the single variable best explaining the success of peace agreements was the length of international engagement.<sup>723</sup> Without such engagement, Marshall and Gurr’s empirical findings in the case of 72 self-determination conflicts signals that the majority will continue to plague the international community rather than resolve themselves.<sup>724</sup>

The need for external guarantees is thus clear and the precedence for an external commitment is not entirely revolutionary either. Concerned interest in the internal affairs of weak sovereigns has a long historical legacy in international relations theory and practice, traceable not only to the pre-modern writings of Grotius who defended the ruler’s right to intervene in the affairs of another sovereign in order to defend oppressed subjects,<sup>725</sup> but also in the Westphalian era’s preoccupation with the religious tolerance of recognized sovereigns. As Krasner has argued, “the struggle to compel leaders to treat their subjects in a certain way has been going on for a long time,” shifting over time from an emphasis on “religious toleration, to minority rights (often focusing on specific ethnic groups in specific countries), to human rights (emphasizing rights enjoyed by all or broad classes of individuals).”<sup>726</sup> It is only natural that the continued evolution of these efforts must of necessity fall in line with changing contemporary security concerns,<sup>727</sup> where state-sponsored violence toward ethnic and political groups now causes more death than “all other forms of deadly conflict.”<sup>728</sup> At their core, these conflicts revolve around internal state processes that have failed to provide legitimate political order to much of the world’s population, driving incessant and deadly conflicts that defy the easy state vs international or individual vs group right dichotomies of previous epochs.

Indeed there is ample evidence to encourage the international community to take an active interest in internal state forms, not only on humanitarian grounds, but also for their own vital interests. Extensive evidence has shown that ongoing conflict in the international system is intimately tied to the continued weakness and chaos of many states. As states solidified in Europe,

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<sup>723</sup>Dobbins, et al. *America’s Role in Nation-Building*.

<sup>724</sup>Marshall and Gurr, *Peace and Conflict 2003*

<sup>725</sup>Schiffer, *Legal Community of Mankind*, 34, 56.

<sup>726</sup>Krasner, 2001, p22.

<sup>727</sup>Meisler, “Most Nations Abuse Human Rights”: which notes that the 1993 Annual report on Human Rights Abuses by Amnesty International showed the highest level of abuse in over three decades of the organization’s history

<sup>728</sup>Stavenhagen, *Ethnic Question*, 76.

North America, and East Asia around a set of civic values protected by effective states, the incidence of war plummeted while it congruently rose throughout the Middle East, Africa, and South and Central Asia.<sup>729</sup> Violence rather than a characteristic of an anarchic international system is at least partially tied to the individual characteristics of the state.<sup>730</sup> While not every internally-stable state will contribute to the global order, the reality of the contemporary world-- with an increasingly large global elite, world-wide instantaneous media coverage, transportable weapons of mass destruction, global telecommunications, travel, and trade links-- is much smaller, more difficult to compartmentalize territorially than its pre-modern predecessors. The problems of the weak and chaotic are thus easily transformed across time and space to the centre of the even stable and powerful states, potentially threatening the most deeply held norms of the modern system and its foundation in the replication of universal political order. Far from impotent in the face of this onslaught, many studies have pointed to the importance of external pressure in the development of effective states in war-torn countries, most notably, Trimberger's assessment of Japan, Turkey, Egypt and Peru.<sup>731</sup> As Krasner surmises, "such external pressures are almost certainly more compelling than internal ones" when societies reach an impasse.<sup>732</sup>

We should not make the mistake then of assuming that states can only be constructed through one process, the myopic view of a small group of European states that incidentally led to the gross excesses of devastating world wars. Ignoring this fact leads to the dangerous relativism of arguments which end up justifying genocide on the basis that, "while there would be no justification for such genocidal practices on the part of more developed states...the same cannot be said in the case of similar actions undertaken by ethnic entrepreneurs in newer post-colonial states."<sup>733</sup> Indeed, Buzan's claim that due to its resemblance of early European violence, genocidal "violence is as likely to be a sign of the accumulation of central state power as it is to be a symptom of political decay,"<sup>734</sup> has proven ill-conceived for even Charles Tilly has acknowledged that while it once was, violence is no longer indicative of state-building due to the evolution of the state system since the European experience.<sup>735</sup> Those that disparage peace-

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<sup>729</sup>Holsti, "War, Peace, and State"

<sup>730</sup>Holsti, *ibid*

<sup>731</sup>Trimberger, *Revolution from Above*

<sup>732</sup>Krasner, *Structural Conflict*, 240.

<sup>733</sup>Rear, *Intervention, Ethnic Conflict*, pxiv.

<sup>734</sup>Buzan, *People, State, and Fear*, 99.

<sup>735</sup>Tilly *Formation of Nation-States*, 81-82.

keeping as a mere freezing of the boundaries of still simmering conflicts, which inevitably fail to push the necessary construction of states along the path toward modern statehood,<sup>736</sup> are in fact missing the point. Genocidal violence has not led over nearly a century to the construction of viable states throughout the developing world.

It would in fact be remiss to assume, as some have, that endemic conflict in states like Iraq are merely<sup>737</sup> mirroring the early stages of state formation as witnessed in Europe. While the violence characteristic of such states may correlate to this period, it is unclear how modern states are now meant to progress along the path of their European predecessors, which were couched in genocidal violence and oppression coupled with boundary changes and the natural selection of the weakest states.<sup>738</sup> As Thomson reminds, the state's historic "function was to make war and to build power vis-à-vis other states *and* society. 'Society' was largely an adversary in this process as it resisted state rulers' efforts to extract resources and monopolize political and judicial authority."<sup>739</sup> The reality, was that "state-makers who were ultimately successful at building centralized, differentiated organizations with a monopoly of coercion over a defined territory were those who undid and then redid the structure of society according to their own agendas."<sup>740</sup> In the first modern states, this often meant the destruction of entire ethnies. In the current technological context, the consequences of such efforts would be on a horrific scale with the potential both to appall the conscious and destabilize regimes far from the epicentre of these conflicts. The choice is clear, if it will not accept such extreme forms of violence against societies (which it clearly can not), the international community must embrace and work toward an alternative path to the construction of strong states in places with continued levels of extreme societal discord. This is a new era and a concomitant new path must be forged to bring together diverse societies in stable, empirically-capable political communities without actions that violate the human conscious. Some modern states have avoided this disastrous ethnic chauvinism namely through negotiated agreements between respective communities or federalism

Perhaps the greatest impetus towards ongoing inaction however stems not from fear of failure, but rather of success. The reluctance to provide much-needed security guarantees from the international community continues to stem chiefly from a mistaken attachment to an imaginary

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<sup>736</sup>Rear *ibid*.

<sup>737</sup>Ayoob, "Security Problematic," 266-268.

<sup>738</sup>For accounts of the violence that characterized European state- building, see Tilly *ibid*, Ertman *ibid*, Spruyt *ibid*.

<sup>739</sup>Thomson, "State Sovereignty in International Relations," 216.

<sup>740</sup>Barkey and Parikh, "Comparative Perspectives on State," 527.



form of absolute sovereignty which has traditionally viewed defacto state likes the KRG through a narrow prism of potential challengers to the status quo borders in which they operate.<sup>741</sup> The preference of the international community bound by this rationale has been on “teaching” societies how to practice modern governance in order to build their state, rather than seeking to build upon the realities of the already existing patterns of authority and control. While paying service to the idea that local institutions should not be ignored in state-building, and acknowledging that state-building is most successful when it builds on local institutions and capacity, the idea that alternatives to national institutions could bolster rather than detract from the functioning of the central state is rarely seen in practice.<sup>742</sup> The overwhelming preference of most of the international community and its theorists remains “boosting the state to replace substate groups in the provision of services and in the affection of local people.”<sup>743</sup> This has constrained constructive recognition of defacto state legitimacy and limited the willingness of international actors to provide needed security guarantees for the preservation of their sovereignty. While *ad hoc* agreements between concerned third parties states, as with Irish participation in the Northern Ireland peace deal, have been acknowledged to play a fundamental role in building trust between combative communities and easing violent conflict, the international community has unwisely resisted similar trust-building measures for defacto states.

In breaking from this pattern, the international community will be moving closer to the development of a set of norms meant to overcome the challenges to international order today, namely the changing nature of conflict from inter-state to that of intra or trans-state, rather than remaining mired in the solutions to the “security dilemma” created for a historical past. Indeed, many scholars have argued that we are now reaching a pivotal point in the development of effective post-modern norms, as the international state system is beset by a host of challenges

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<sup>741</sup>Defacto states like the KRG have rarely been theorized around based upon their function in the larger regional and international contexts in which they exist. Even the three clearest and most developed examples of this phenomenon, the Kurdistan Regional Government in northern Iraq, the TRNC in Cyprus, and the self-declared Republic of Somaliland in Somalia, which are clearly advanced in terms of their institutional development and autonomy from the states that encompass them, have been largely treated from a theoretical standpoint as sub-national actors despite the vast importance that the regional and international context has played in their evolution. Without being able to ignore this fact, scholars have chosen to awkwardly place the international context into the discussion as an extenuating variable, see Romano, *The Kurdish Nationalist Movement*, for one such example.

<sup>742</sup>A perfect example of this can be found in writing on the UN assistance to East Timor. The focus of these is consistently on replacing, rather than integrating local authority and legitimacy with the state, Bowles and Chopra, “East Timor: Statebuilding Revisited”

<sup>743</sup>Reno, “Bottom-up Statebuilding?” 143-162.

ranging from weapons of mass destruction to global communications technology.<sup>744</sup> The centralizing, all-powerful state is ill-positioned to address these challenges alone, forcing the world into “transition from strict acceptance of sovereign jurisdiction and non-intervention to more and more readiness to undertake...action, up to and including military action that would have in the past been considered intervention in domestic affairs.”<sup>745</sup> This sort of cyclical view of sovereignty is more closely in-line with the reality of the evolution of sovereignty norms than the static and inflexible one found in the work of realist scholars, for as Barkin and Cronin articulate, the norm of sovereignty as a legitimising principle in world affairs has gone through periodic systemic crises due to major upheavals or wars. It has previously acted as both a protectorate of state sovereignty that precluded changes in the territory of existent states, and as a support for national self-determination during periods when national sovereignty was seen as paramount.<sup>746</sup> Rather than a fixed concept then, international relations scholars have historically imbued sovereignty with the flexibility necessary to meet the challenges presented to stability of the international system of states during particular epochs, and it is out of necessity that it must continue to do so for its own preservation now. Without such a creative movement, the future may be relegated to the vulgarities of medievalism as many scholars fear.<sup>747</sup>

However, while internationally-supported federal arrangements may be the solution to some of the worst cases of human suffering on the planet today and is certainly the most promising answer for Iraq, this paper must also pay homage to the recognized fact that the complexities of the modern world ultimately doom “all grand theories.”<sup>748</sup> Certainly in the case of defacto states, not all are created equal. For normative and practical reasons, some are certainly more palatable and feasible than others, and while it is beyond the scope of this dissertation to address all possible parameters for consideration some appear ripe for brief consideration. Cases in which the above arguments apply certainly require that both partners are viable end players in governance. In Iraq, the presence of a viable partner, the Kurdistan Regional Government, with its multi-party system, rejection of terrorism, and inclusive non-national political philosophy make it

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<sup>744</sup>In particular Bobbit, *Shield of Achilles*, who argues that the state is now transitioning into “a minimal provider or redistributor” that must enable the individual by creating opportunities for choice,” 229.

<sup>745</sup>Sonnenfeldt quoted in Wright, “UN: Latest Mission Reflect”

<sup>746</sup>Barkin and Cronin, “State and Nation,” 108.

<sup>747</sup>Kobrin, “Back to Future: Neomedievalism”

<sup>748</sup>Francis Fukuyama, “Foreword,” in Huntington, *opt. cit*, p xvii.

a prime candidate for international support.<sup>749</sup> Other like-minded regimes can be found in the case of the Eritrean defacto state, which is now independent, and Somaliland. These established and more sophisticated defacto regimes have at least minimally earned consideration by the international community and could feasibly perform responsibly in international organizations, treaties, and the like.

This example stands in sharp contrast to the realities of other defacto states, such as that which existed in the Tamil areas of Sri Lanka. Governed by a regime with an extremely ethnic mentality that excluded large numbers within its own territorial jurisdiction, the primary political movement at the time being, the LTTE, was hardly a viable partner for the sort of international recognition argued for in this work. Its vilification of ethnic Sinhallas and often brutal treatment of minorities within its territory, a product of an extreme nationalism that claims the homeland to be exclusive for Tamil-speaking Hindus,<sup>750</sup> does not offer the same hope for peaceful co-existence that a resolution based on state rather than national identities clearly possess. As witnessed by the failed attempt by the Indian army to negotiate a settlement between the LTTE and the Sinhalese government, in these situations, the defensive and ethno-centric mentality of the defacto state's political representation prevents its ability to interact and accept the authority of the international community or its norms. These regimes, engaged in rape, torture, extrajudicial kidnappings, the targeting of civilians, and the recruitment of child soldiers are not a significant improvement upon the already existing chaos of their states. While this is just one extreme and case, many other defacto states have also maintained questionable legitimacy among their populations untested by electoral processes, such as in South Ossetia or Abkhazia, where the overt and profound support of external patrons muddies the clarity of actual socio-political support for their ongoing existence. Without extensive social legitimacy of their own, it is unlikely they can contribute much to the questionable legitimacy of their contested sovereigns through inclusion in power-sharing arrangements.

Yet even though many of these defacto states might not qualify for support, even this brief glance outlines the importance of a pro-active stance by the international community to recognize potential negotiations for autonomous political entities, driving the sort of competitive

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<sup>749</sup>Some other considerations found in the literature include; the radical change in regime, weakness of any one political party in Baghdad, and shared suffering. The Iraqi population is also educated and widely exposed to political philosophies of a non-ethnic or religious nature (though both ethnic and religious political philosophies continue to hold wide sway).

<sup>750</sup>Hoole, et al, *Broken Palmyra*

democratization characteristic of the most established defacto states, which have been shown to drive institutionalization of their legitimacy and by extension that of their host states through a realization that their continued existence rests on adherence to international governing norms.<sup>751</sup> As the case of the non-recognition of “Bantustans” and Transkei, which would have continued the distasteful domestic practice of apartheid demonstrate, “the character of domestic policies or regimes becomes a factor in external legitimacy” and likely should continue to do so as the international community examines the rise of future defacto states. The implication of course is that the KRG and other defacto states know that the international commitment to their existence remains rooted in the domestic character of their regime.<sup>752</sup> Conversely, without hope of such recognition in many places, the international society loses much of its pressure to push these regimes to conform to international state norms, contributing to the devolution of conflicts and promotion of more virulent ethnic entrepreneurs. The initial conflict between the Tamils and the Sinhalese state were after all centered around peaceful aspirations for greater autonomy and federalism,<sup>753</sup> where repeated failure to attain any movement toward recognition saw the gradual weakening of moderates and a concomitant intensification of blood-letting between the respective parties. It is not difficult to imagine the same future of bloodshed and radicalism could be in the works for more benign defacto states like Somaliland should it continue to be excluded from any form of international recognition and face renewed hostility from neighboring clans. These sorts of attacks could lead its state ideology back down a dangerous path toward clan-centered exclusivism and radicalization that would have a devastating impact on its own population, neighboring states, and what is left of Somalia. Without active engagement, the international community loses sway to prevent such back-sliding and cannot positively inculcate the spread of its norms and values to these infant political entities. Developing a system whereby states can recognize the sovereignty of these political entities short of independence allows the society of states to do so, spreading important lessons about the proper construction of universal political order and post-modern governance’s treatment of diversity as well.

The above study of Iraqi Kurdistan thus provides only one possible, but very important example, of the potential for new and innovative solutions to the impending crisis of political authority and control in the 21<sup>st</sup> century. As a case study, it highlights some of the potential for

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<sup>751</sup>Casperson, “Promoting Democracy”

<sup>752</sup>Herz, “Legitimacy,” 322

<sup>753</sup>Silva, “Separatism in Sri Lanka”; Samarasinghe, “Dynamics of Separatism”

negotiated federal solutions to move defacto states into active participation in the construction of more stable, viable states in areas that have traditionally been plagued by repeated state instability and high levels of socio-political violence.

## Addendum A: Article 64 of the Treaty of Sevres

Article 64 of the Treaty, which was never formally adopted due to ongoing political and military changes in Turkey, states that:

*“If within one year from the coming into force of the present Treaty the Kurdish peoples within the areas defined in Article 62 shall address themselves to the Council of the League of Nations in such a manner as to show that a majority of the population of these areas desires independence from Turkey, and if the Council then considers that these peoples are capable of such independence and recommends that it should be granted to them, Turkey hereby agrees to execute such a recommendation, and to renounce all rights and title over these areas...*

*If and when such renunciation takes place, no objection will be raised by the Principal Allied Powers to the voluntary adhesion to such an independent Kurdish State of the Kurds inhabiting that part of Kurdistan which has hitherto been included in the Mosul vilayet.”*<sup>754</sup>

Thus, according to the provisions of Article 62, a three person British, French, and Italian committee would visit the 'predominantly Kurdish areas lying east of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontier of Turkey with Syria and Mesopotamia' to determine the exact boundaries of the new Kurdish state, consider revising the Turkish-Persian border based upon its findings, and include the Kurdish areas of modern day Iraq within the new Kurdish state if it was created.<sup>755</sup>

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<sup>754</sup>Treaty of Sevres, Section 1, Article 64. *The Treaties of Peace 1919-1923, Vol. II* (New York: Carnegie Endowment for International Peace, 1924.) Brigham Young University. Accessed 27 Jan, 2009.

<<[http://www.lib.byu.edu/index.php/Section\\_I%2C\\_Articles\\_1\\_-\\_260](http://www.lib.byu.edu/index.php/Section_I%2C_Articles_1_-_260)>>

<sup>755</sup>Ibid.

**Addendum B: Article 110 of the Iraqi Constitution**

- 1) *Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international agreements and treaties; negotiating signing, and ratifying debt policies and formulating foreign sovereign economic and trade policy*
- 2) *Formulating and executing national security policy, including establishing and managing armed forces to secure the protection and guarantee the security of Iraq's borders and to defend Iraq.*
- 3) *Formulating fiscal and customs policy; issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank.*
- 4) *Regulating standards, weights, and measures*
- 5) *Regulating issues of citizenship, naturalizations, residency, and the right to apply for political asylum*
- 6) *Regulating the policies of broadcasting frequencies and mail*
- 7) *Drawing up the general and investment budget bill*
- 8) *Planning policies relating to water sources from outside Iraq and guaranteeing the rate of water flow to Iraq and its just distribution inside Iraq in accordance with international law and conventions*
- 9) *General population statistics and census*<sup>756</sup>

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<sup>756</sup>This summary can be found in O'Leary, *How to Get Out*, 118.

### **Addendum C: Article 58 of the TAL and Article 140 of the Iraqi Constitution**

The text of Article 140 in fact largely grand-fathered in “all subparagraphs” of the compromise established by Article 58 of the Transitional Administrative Law, committing the new Iraqi government to the same stipulations, which read:

“(A) The Iraqi Transitional Government, and especially the Iraqi Property Claims Commission and other relevant bodies, shall act expeditiously to take measures to remedy the injustice caused by the previous regime’s practices in altering the demographic character of certain regions, including Kirkuk, by deporting and expelling individuals from their places of residence, forcing migration in and out of the region, settling individuals alien to the region, depriving inhabitants of work, and correcting nationality. To remedy this injustice, the Iraqi Transitional Government shall take the following steps:

- (1) With regard to residents who were deported, expelled, or who emigrated; it shall, in accordance with the statute of the Iraqi Property Claims Commission and other measures within the law, within a reasonable period of time, restore the residents to their homes and property, or where this is unfeasible, shall provide just compensation.
- (2) With regard to the individuals newly introduced to specific regions and territories, it shall act in accordance with Article 10 of the Iraqi Property Claims Commission statute to ensure that such individuals may be resettled, may receive compensation from the state, may receive new land from the state near their residence in the governorate from which they came, or may receive compensation for the cost of moving to such areas.
- (3) With regard to persons deprived of employment or other means of support in order to force migration out of their regions and territories, it shall promote new employment opportunities in the regions and territories
- (4) With regard to nationality correction, it shall repeal all relevant decrees and shall permit affected persons the right to determine their own national identity and ethnic affiliation free from coercion or duress

(B) The previous regime also manipulated and changed administrative boundaries for political ends. The Presidency Council of the Iraqi Transitional Government shall make recommendations to the National Assembly on remedying these unjust changes in the permanent constitution. In the even the Presidency council is unable to agree unanimously on a set of recommendations, it shall unanimously appoint a neutral arbitrator to examine the issue and make recommendations. In the event the Presidency Council is unable to agree on an arbitrator, it shall request the Secretary General of the United Nations to appoint a distinguished international person to be the arbitrator.

( C) The permanent resolution of disputed territories, including Kirkuk, shall be deferred until after these measures are completed, a fair and transparent census has been conducted and the permanent constitution has been ratified. This resolution shall be consistent with the principle of justice, taking into account the will of the people of those territories.”



**Addendum D: The relevant articles INCLUDE:**

Article 111:

Oil and gas are owned by all the people of Iraq in all the regions and governorates.

Article 112:

First: The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law

Second: The federal government, with the producing regional and governorate governments, shall together formulate the necessary strategic policies to develop the oil and gas wealth in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of the market principles and encouraging investment.

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